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European Commission Against Racism and Intolerance

First report on Poland

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

The first series of eleven ECRI's country-specific reports² were transmitted to the governments of the countries concerned in July 1997. The reports are accordingly now made public. The following report contains ECRI's analysis and proposals concerning Poland.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This first series of eleven reports, for which the procedure was completed by June 1997, will be followed by other series of reports on the remaining member States of the Council of Europe. The order in which the

¹ The report prepared by the Swiss Institute (ref: CRI (97) 38), covering relevant legislation in member States of the Council of Europe is available from ECRI's Secretariat.

² Reports on Belgium, the Czech Republic, Finland, Greece, Hungary, Iceland, Ireland, Lithuania, Luxembourg, Malta and Poland.

reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

REPORT ON POLAND³

Introduction

Poland, like most other countries of Central and Eastern Europe, is currently experiencing a period of social, economic and cultural upheaval and transition. All its problems and the solutions put forward to deal with them should therefore be seen in this context.

There are several national minority groups in Poland that distinguish themselves by culture, language and religion. The most numerous are the German-speaking populations of Upper Silesia and Mazuria, the Lithuanians, Belarussians, Ukrainians, the Czechs and the Slovaks. While the Polish Government has generally quite a positive attitude towards the national minority groups, and makes genuine efforts to solve the problems they face, public opinion tends quite often to be rather less positive. Although outright manifestations of discrimination or intolerance are rare, some actions have been carried out in the different regions against individual minority groups. A special problem is the persistence of anti-Semitic feelings among some sectors of society and in certain extremist groups: apart from the general effect this may have on the climate of tolerance in Poland, it may naturally have in particular an effect on the small Polish Jewish community. Another factor to be taken into consideration is the new phenomenon of migration into the country, which is likely to change Poland's demographic composition in terms of ethnic origin considerably in the coming years.

Some of the key areas identified by ECRI as meriting particular attention include:

- strategies for dealing with the new phenomenon of migration into the country
- the development of legislative measures to combat racism and discrimination
- the development of a consistent state policy on issues connected with racism and intolerance
- the development of reliable statistics concerning the numbers of minority groups in Poland and their situation
- awareness-raising and promotion of positive attitudes among the general public about the existence, the culture and, not least, the contribution of the national minorities which have traditionally lived among them.

³ Note: Any development subsequent to 4 October 1996 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

I **LEGAL ASPECTS⁴**

A. **International legal instruments**

1. Poland's decision to sign and ratify the European Social Charter and to accept Article 14 CERD is welcomed, and it is hoped that the appropriate steps will be taken as soon as possible.
2. It is furthermore hoped that Poland will sign and ratify the European Charter for Regional or Minority Languages, and ratify the Framework Convention for the Protection of National Minorities as soon as possible. While it is recognised that Poland may currently be facing administrative and financial difficulties which may limit the possibility of fully fulfilling obligations entered into through ratification of international instruments, it is nevertheless felt that ratification of these instruments is both feasible and worthwhile, and that special efforts should be made to overcome the obstacles faced.
3. The Treaty between the Federal Republic of Germany and the Republic of Poland on good neighbourhood and friendly co-operation of 17 June 1991 constitutes a solid basis for the protection of the German minority's rights to their ethnic, cultural, linguistic and religious identity. Agreements concerning national minorities have also been concluded between Poland and the Ukraine, Lithuania and Belarus.

B. **Constitutional provisions**

4. Poland is still in the process of elaborating a new Constitution. This is therefore a good opportunity to review the constitutional solution of the implementation of international human rights in domestic law. It is true that, interpreting the 1989 amendment of the 1952 Constitution, a Supreme Court decision in June 1992 determined that international treaties would be directly applicable in Polish law provided they were self-executing: this is not however the case with all treaties, notably the CERD, which is still not directly applicable at the present time. It is therefore welcomed that a draft for a new Constitution, approved in June 1996, includes a provision by which all International Treaties ratified are directly implemented in domestic law. It is desirable that such international human rights treaties have priority over domestic law if the two are in contradiction with each other.

- ***Draft law on minorities***

5. The recognition of the need for specific legislation concerning minorities and the preparation of a draft law on minorities (under discussion by a Parliamentary Commission) is welcomed.

C. **Criminal Law Provisions**

6. As regards criminal law provisions, these might be supplemented in the field of racism and discrimination⁵. Even if it is felt that problems of discrimination are not currently in evidence in Poland, it would be desirable to set up a legislative framework in this field given that the situation is developing so rapidly as regards new migration into the

⁴ A full overview of the legislation existing in Poland in the field of combating racism and intolerance is provided in the publication CRI (95) 2 rev. prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).

⁵ N.B. Article 272 of the Criminal Code provides that "he who publicly incites to discord on the grounds of national, racial or religious differences or commends such discord in public, shall be subject to a penalty of 6 months' to 5 years' imprisonment".

country. Furthermore, legislation can perform an educative role in that it provides a clear public message that certain discriminatory behaviour is not acceptable.

D. Civil and administrative law provisions

7. In Poland, as in many other post-Communist countries, few specific civil and administrative law provisions exist to combat racism, antisemitism, xenophobia and intolerance⁶. It is therefore suggested that civil and administrative law provisions should be adopted to cover more explicitly such fields as expressions of discrimination and racism in the media and elsewhere; provisions regulating the recording and use of data on race/religion/colour; provisions against discrimination in employment⁷; provisions against discrimination in selling of goods or providing of services; provisions between private parties in other spheres of life (eg renting houses).

E. Specialised bodies

8. The necessity of setting up an independent, specialised body at national level with full competence, including the right to intervene, in the field of minority groups and racial or ethnic problems might be considered. Such a body could be responsible for overseeing the situation as regards international treaties, informing the public about Poland's obligations under these treaties, enforcement of the legal provisions on racism and intolerance, awareness-raising among the general public as regards their rights and duties, promotion of tolerance and understanding of other cultures etc.
9. Although there are three institutions dealing with national minorities and ethnic problems (ie the Bureau for National Minorities within the Ministry of Culture and Arts, the Office for Immigrants and Refugees within the Ministry of the Interior, and the Parliamentary Commission for National and Ethnic Minorities), as well as an Ombudsman, in practice these bodies do not cover the whole area of the phenomenon of racism and intolerance. Furthermore, due to the decentralisation of the administration, it is left to each voivodship to determine its own policy in these matters. An independent body which could co-ordinate the different policies in force in the various areas, ensuring that broad policy guidelines are adhered to, would therefore be desirable.

II POLICY ASPECTS

F. Reception and status of non-citizens

10. Given the recent rise in the phenomenon of migration into Poland and the growing numbers of refugees and immigrants in the country, policy and practices need to be re-examined to ensure that they respond to this new situation. It is felt that a suitable body, possibly the existing Office for Immigrants and Refugees in the Ministry of the Interior, might be given the task of co-ordinating and proposing policy in this respect, in collaboration with relevant NGOs and associations.

⁶ Article 23 of the Civil Code provides that "The personal interests of a person, in particular his health, liberty, dignity, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of domicile, scientific and artistic works, inventions or improvements authored by him, shall be protected by civil law, irrespective of the protection provided for under other regulations", and might therefore be considered as providing a general protection against discrimination, although race, ethnic origin etc are not specifically mentioned.

⁷ N.B. Article 13 of the Labour Code states that "Any form of discrimination in labour relations, particularly on the grounds of sex, age, disablement, race, nationality, beliefs, especially political or religious beliefs, or trade union membership shall be inadmissible". However, it is not clear what are the implications of the term "inadmissible".

11. As regards refugees and asylum-seekers, clear rules and guidelines governing the processing of applications should be drawn up and transmitted to all officials with responsibility in this area. Unreasonably long delays in procedures should be reduced. Furthermore, measures could be taken to ensure that those allowed to stay in Poland receive assistance in settling in Poland. Such measures include language teaching, advice and assistance in receiving social and welfare benefits, training and other measures to facilitate integration into the employment market, training for relevant officials (police, welfare and social workers etc) to raise awareness of the problems faced by these groups etc.
12. As regards public attitudes towards these new groups, special efforts should be made to inform the general public about their situation in an open and non-threatening way. One example of action already underway in this respect is the "Humanitarian Education" programme organised by the NGO Polish Humanitarian Action.

G. Education and training

- *Training of law enforcement officials and the judiciary*

13. Since there is at present no relevant jurisprudence on racism and intolerance, and little experience in dealing with such questions among the judiciary and law enforcement officials, it is suggested that attention be paid to the initial and continued training of all officials working within the law enforcement system both at national and local level and particularly the judiciary, bearing in mind the key role the latter plays in this respect. One possibility might be to establish a special institution with responsibility for training magistrates and other officials, or to entrust the institution mentioned under item 9 with this role.

- *Awareness-raising*

14. Another key factor in the Polish situation is the lack of public awareness of the problems faced by minority groups, and a marked lack of interest in "foreign" cultures and societies. As previously mentioned, anti-Semitic feelings still persist in Poland, and this problem should be taken seriously. Albeit that actual manifestations of intolerance and xenophobia are rare, it might be supposed that people's attitudes are less tolerant than their behaviour, and this climate of lack of openness towards other cultures runs the risk of developing into something more serious. Therefore, efforts should be made to raise awareness among the public, in a positive manner, of the minority groups present within their country and the contribution made by different cultures to society as a whole, to stimulate interest in foreign cultures, and to counter stereotypes. The mass media, particularly the television, has a crucial role to play in this respect, as it can teach in an entertaining way and avoid arousing negative attitudes and creating explosive situations through sensationalising any problems. Recent Council of Europe activities concerning the media and intolerance are of particular relevance in this field.

Another body which can play a positive role in awareness-raising and the promotion of tolerance is the Catholic Church in Poland, which has the potential to play an important part in improving community relations.

- ***Political leadership***

15. Political and other leaders should take an active interest and adopt a positive stance as regards national minorities and non-citizens present in Poland. Any negative feelings on the part of the general public towards the perceived favourable conditions enjoyed by minority groups in Poland could be countered by the argument that Poland is setting a good example to its neighbours on how to treat minority groups, and that this will encourage reciprocally good treatment for Poles living abroad.

- ***Education***

16. Closely linked to the above-mentioned need for awareness-raising is the field of education. Taking into account that during the whole Communist period the official doctrine was that Poland had no minority groups at all, it is now desirable that a strong commitment be shown at all educational levels to promoting mutual understanding between the majority and the various minority groups, describing differences and similarities in a positive way.
17. In particular, the revision of text books and a review of history teaching are key elements in this process. Since text books are already being reviewed as a result of the change from a Communist to a democratic system, this is a good opportunity to ensure that the new text books promote multiculturalism and tolerance towards others.

- ***Educational provision for national minorities***

18. The 1991 Education Act and the Education Minister's Guidelines on educational activities aimed at maintaining the national, ethnic and linguistic identity of minority pupils of 24 March 1992 lay down the foundations governing the teaching of minority languages. National minorities in Poland manage several schools for the teaching of their languages: the Germans have 170 schools; the Ukrainians 70 schools; Lithuanians two schools; (although Lithuanian is taught in more than 20 schools); Belarussian is taught as a second language in about 50 primary schools and there are also two Belarussian schools.
19. Levels of higher education are low among national minorities. Most Roma/ Gypsies do not even complete primary school. Measures could be taken to improve the educational levels attained by national minorities, particularly children from the Roma/Gypsy community. Furthermore, representatives of national minorities might be recruited to the offices of the School Superintendent to ensure that the educational needs of national minorities are being met.

H. Employment

20. The number of work permits issued to non-citizens has tripled over the last five years, many issued to persons from the countries of the ex-Soviet Union. It should be ensured that the new arrivals on the labour market enjoy the same rights and opportunities as Polish citizens as regards conditions of employment, wages, access to housing etc. Furthermore, special measures might be initiated to help newcomers to Poland in entering the labour market: these could include for example language training, "conversion courses" to adapt experience and qualifications, schemes to encourage non-citizens to set up their own businesses etc.
21. It seems difficult to assess whether the various minority groups living in Poland experience problems as regards employment, although the Roma/Gypsy community is certainly very disadvantaged. It could be desirable to study this issue more closely in

Poland to ascertain the actual situation as regards employment for the different minority groups.

I. Statistics

22. There is a system for data collection on ethnic and national groups in Poland, based on individual declarations of persons belonging to minority groups. However, most sources indicate that it is impossible to determine accurately the size of any ethnic or national group in Poland, since post World War II censuses have not included questions pertaining to ethnic identity. Without accurate and up-to-date statistics in this field it is impossible to draw up suitable policies or evaluate their effectiveness. Therefore, an absolute priority must be the establishment of a reliable system of data-collection in this field, in accordance with European laws, regulations and recommendations on data-protection and protection of privacy, in order to determine the real figures of ethnic and national minorities, immigrant groups etc.
23. Similarly, systems should be established for monitoring the performance of the various minority groups in the economic and social spheres (e.g. levels of education attained, rates of unemployment etc) in order to develop policies to counter any problems revealed.

J. Media

- Access of national minorities to media

24. The Broadcasting Act of 29 December 1992 widened the access to public radio enjoyed by minority groups, and states that the needs of national minorities and ethnic groups should be taken into account (Article 21, subsection 9). Certain public radio stations broadcast programmes in minority languages. In addition, the Ukrainians broadcast on four local radios and have their own publishing house, whereas the Germans, Belarussians, Lithuanians, Czechs and Slovaks also have their own journals.

K. Other fields

- Political participation of national minorities

25. National minorities are represented in local government, but not in the voivodship administration (the Germans and Lithuanians have requested such representation). It is harder for national minorities to win seats in Parliament despite preferential conditions which do not require candidates from national minorities to exceed a threshold which applies to other candidates, and at present only the German minority has won seats. The new draft law on minorities aims to ensure a better representation in Parliament for every national minority. The Parliamentary Commission on National and Ethnic Minorities includes representatives of individual national minorities, including members of Parliament.

- Use of minority languages

26. The State language of Poland is Polish: all central and local government authorities and offices function in this language and Polish law does not at present envisage the use of other languages in the State administration, even as auxiliary languages. Consideration could be given to widening the use of minority languages in the various bodies of the State administration, particularly in areas where large national minorities reside.

- ***Associational life***

27. Building up understanding on a local, community level is crucial to establishing a climate of good intercommunity relations. Support and encouragement should be given to local initiatives on the part of associations, non-governmental organisations, community groups etc. which aim to foster good relations and to assist immigrants and refugees.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Polish government on 13 July 1994.

ECRI accepts no responsibility for the data below.

1-1.5 million citizens (4% of population) of non-Polish nationality

German: 350-700 000; Belarussian: 250-350 000; Ukrainian: 200-300 000; Roma/Gypsies: 20-25 000; Slovak: 20 000; Lithuanian: 15-25 000; Jewish community: 10-15 000; Tatars: 4 000.

Armenians: 8 000. Karaims: less than 1 000; Czechs: no figure provided

Population of Poland: 38.4 million (1993). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

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This bibliography lists the main published sources consulted during the examination of the situation in Poland: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc) which were utilised.

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