

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Poland.

APPENDIX

ECRI wishes to point out that the analysis contained in its second report on Poland, is dated 10 December 1999, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Poland to engage in a process of confidential dialogue with ECRI on its draft text on Poland and a number of his comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the national liaison officer expressly requested that the following observations on the part of the authorities of Poland be reproduced as an appendix to ECRI's report.

Observations provided by the Polish Authorities concerning ECRI'S report on Poland

Since the fundamental democratic changes in 1989 no serious acts of human rights violations have been reported with respect to Poland.

The formulation 'feelings of anti-Semitism remain pervasive', used at the start of the Executive Summary, is an ungrounded generalisation which may contribute to the creation or entrenchment of false and harmful stereotypes.

The Government of Poland therefore is herewith submitting the following remarks relating to individual parts of the Report:

SECTION I: OVERVIEW OF THE SITUATION

B. Constitutional provisions and other basic provisions

Paras 3 - 6: The report does not mention all the articles of the Constitution relating to the question of racism and discrimination. Besides the indicated Articles 32, 13, 35 and 53, one should also mention:

- Article 25, granting equal freedom of churches and religious organisations;
- Article 43, ensuring freedom of expression and the right to obtain and disseminate information;
- Article 58, ensuring freedom of assembly;
- Article 60, ensuring to Polish citizens their right to enter public service on an equal basis;

-- Article 87, paragraph 1, stating that the source of Poland's binding law are: the Constitution, legal acts and ratified international agreements (that pertain to the bilateral and multilateral treaties on the protection of human rights and the rights of national and ethnic minorities).

D. Civil and Administrative Law Provisions

Para 15: The Polish authorities underline that this is a provision of an imperative nature. In the Commentary to the Labour Code (see: Z. Salwa, The Code of Labour. Commentary and current legal situation, Bydgoszcz 1997, pp.26-27) it is explained that this general clause forbids any kind of discrimination in the labour sphere and it is aimed at ensuring full consistence of Polish Labour Law with all conditions which the Council of Europe and the European Union require from their member States. Therefore doubts expressed in the ECRI's report seem to be completely unjustified.

Para 17: Reservations as to the length of civil and administrative court proceedings as well as to the execution of court rulings are part of a broader problem existing within the Poland's judiciary (the whole system of judiciary undergoes at present structural reforms). In no way do they especially pertain to the victims of racial or ethnic discrimination.

E. Specialised bodies and other institutions

Paras 20-21: Among specialised bodies and institutions the Report failed to mention the Department for the Protection of Borders, Migration and Refugees, functioning at the Ministry of Interior and Administration (MIA), as well as the Council for Refugees. It also made no mention of the National Minorities Section within the Citizenship Department (MIA) which deals with the problems of national and ethnic minorities.

F. Reception and status of non-citizens

Para 24: In accordance with the 26 August 1999 ruling of the High Administrative Court (File No. Act V S.A. 708/99), Article 37 of the 1997 Law on Aliens should not place time limits on requests for refugee status submitted by a person who came to Poland illegally. Aliens detained in guarded centres for aliens and in jails for the purpose of deportation have free access to refugee procedures. In Poland there are practically no restrictions on access to refugee procedures stemming from the date or place an application for refugee status was submitted.

Para 25: Individuals applying for refugee status have the right to declare the language in which they are to be interviewed. They confirm their decision with their signature. Both the MIA's Department for the Protection of Borders, Migration and Refugees as well as Border Guards' checkpoints ensure interpreters during interviews. Every applicant is supplied with written information on procedures in a language he/she can understand. Additional information is in the possession of NGOs involved in helping and counselling aliens.

G. Access to public services

Para 36: In accordance with the Constitution of the Republic of Poland, education is obligatory to age 18. Poland has a high level of school attendance at the primary level (99.96% of children, including 0.17% who have been absolved of their school obligation or had it deferred) and the post-primary level (97.1% of adolescents). It can therefore be stated that education at those levels is universal regardless of the origin of children and adolescents. For that reason, only constant monitoring of the teaching of the native tongue in pre-schools and schools for children and adolescents belonging to national and ethnic minorities is conducted. It has shown a significant increase in the number of children and adolescents learning the native language among the German minority and the Ukrainian minority and a stable level within the Belarussian minority, the Lithuanians and Slovaks.

Monitoring the education and Roma-Gypsy children and youth constitutes an exception. Unlike other minorities, the Romanies do not display a similar interest in having their children taught in dialects (in Poland six Romany dialects are in use). Another problem is enforcing school attendance by children of that minority. The Ministry of National Education is now in the process of gathering data through the intermediary of local school superintendents. Those data, however, are merely estimates and should not be used as official statistics.

General monitoring of the education of national and ethnic minorities at the higher-education level is not conducted, because that could violate the privacy of individuals and their right to self-identification. Moreover, minority communities have never made any requests to that effect.

Para 37: Unjustified is the statement contained in the report alleging the impeded access of national minorities to higher education. That statement has been made, even though the authors of the report admit they lack concrete data on the subject. The recommendations of experts, who failed to indicate which minorities they had in mind, are not backed by specific examples, either.

We wish to emphasise that the right of equal access to education is being implemented in Poland. Every child has the right to receive free education in public primary and secondary schools as well as at daytime studies in institutions of higher learning. Schools that teach national-minority languages receive preferential financial treatment, and some of them have a very high percentage of school leavers admitted to academic institutions.

With regards to Romany children it should be emphasised that their education is not among their parents' priorities in life. Implementation of the obligation to attend school by the children and youth of that minority is a problem. But it does not stem from state policy or local authorities that operate schools. In co-operation with Romany communities an extensive report has been prepared on the education of Roma-Gypsy children in areas where a large percentage of them do not attend school. The report's findings will be used in efforts to improve those children's educational level.

H. Employment

Paras 39-40: The regulations of the Law of 14 December 1994 on Employment and Counteracting Unemployment do not allow any form of discrimination of Polish citizens due, among other things, to their nationality, as regards access to employment. This also includes citizens of other countries who have a residence permit or refugee status in RP territory and have received permission to work. They have identical rights to those of Polish citizens as far as access to employment is concerned. But the above-cited law does not ban discrimination visible in job offers themselves. There are plans to introduce such a provision -- in line with the resolutions of European Union Directive 76/207 -- into the amended version of the law.

L. Conduct of certain institutions

Para 49: Police statistical sources confirm incidental occurrences of crimes against people of Asian and African origin as well as representatives of Polish Roma. It is difficult to determine, however, whether the offences were racially motivated. Investigations generally indicate the hooligan nature of such offences.

Special training designed to sensitise policemen to the problems of racism and intolerance is not conducted, but such instruction is conveyed as part of other training programmes as is the question of tolerance towards religious minorities, sexual minorities, etc. In 1992, the National Police Commander issued special guidelines regulating actions of local police authorities designed to prevent social conflicts of a nationality-related and religious nature.

Para 50: In all the cases of reported crimes against Romanies, active police efforts were immediately launched to clarify the circumstances of the offences and identify the offenders.

Examples include:

1. Identifying and detaining (after a dozen-odd hours) of the offender who had thrown a bottle of flaming liquid into the home of a Romany family in Bytom in September 1998. The offender was sentenced to five years in prison.
2. Identifying and detaining, within two days after the offence was reported, four individuals who physically attacked Roma in Nowy Sącz in May 1999.

Obviously, not all police efforts produce positive results. A breeding ground for misdemeanours or felonies of the above-mentioned type are conflicts with local communities or incidental acts of a hooligan nature which may affect Polish citizens or white aliens to the same degree.

The enforcement of legal sejours in RP territory, registration obligations and the legality of gainful employment affect all aliens in Poland, including Romanian citizens. It should

be noted that reported cases of police officers violating regulations or breaking the law are monitored and subject to disciplinary proceedings. Such proceedings are instituted in every such case by specialised units directly subordinated to the National Police Commander or voivodship (provincial) police headquarters. Individuals whose violations against criminal suspects have been proved are punished with full severity - from disciplinary discharge and the institution of an investigation by the prosecutor to being found guilty and sentenced by a court of law.

SECTION II: ISSUES OF PARTICULAR CONCERN

M. Climate of opinion

Para 52: Judging by the activities of cultural centres, art galleries, theatre and cinema repertoires, the publishing market, the subject-matter discussed in periodicals and, above all, television programming, interest in "foreign" culture is no smaller than interest in native culture.

Available public-opinion research does not justify the statement: 'In particular, anti-Semitism continues to be an issue in Polish society.'

That is an unjustified generalisation.

Para 55: Since the first free elections in 1989 no political party invoking xenophobic and anti-Semitic rhetoric ever gained public support in excess of 0.1%.

Para 56: The acts of profanation of cemeteries mentioned in this paragraph are by no means limited to Jewish burial places alone. This drastic problem is connected in Poland with the still unresolved question of juvenile delinquency, sects and, above all, due to some shortcomings of the judiciary system.

Para 57: The issue raised in this point, 'claims for restitution brought by American Jewish organisations', has triggered vigorous protests not because of the nationality or origin of the claimants but because of the slanderous, blatantly anti-Polish and wholly groundless accusations formulated by the solicitors (and not by American Jewish Organisations as stated in the Report) representing over a dozen-odd American citizens of Jewish descent. Those scandalous allegations were made public. Among other things, they attributed to Poles the continuation of Hitlerite (!) anti-Semitism and equated the policy of the communist government (which most Poles regarded as alien) with the attitude of all of Polish society.

Para 58: We wish to state at this point that more than 100 new works are published each year in Poland on the history and culture of Jews, that government agencies permanently subsidise Jewish periodicals and cultural projects of the Jewish minority. Jewish festivals, performances and other cultural events attract a large Polish audience. More than 30 schools in Poland are involved in various exchange programmes and other forms of co-operation with their peers -- Jews in Israel and in the Diaspora. Poles are

participating in the March of the Alive (last year there were 500 Poles among the 1,500 marchers).

N. Roma/Gypsy community

Para 59: Charges alleging that Roma are being discriminated against by local authorities have not been borne out by specialist research. That is attested to by the report entitled 'Romanies and Unemployment -- Elements of the Description of the Social Situation of Romanies in Poland in 1999'. When asked about the attitude that such institutions as municipal authorities, the police and courts displayed towards them, 80% of the Romanies surveyed described it as positive. Also worth noting is the fact that in some communities in Poland some 75% of the families of that minority group systematically receive social-welfare assistance. They benefit from inter alia (according to data from the Voivodship Office of Małopolska in Kraków) cash allowances, free meals for school children and assistance in kind. Audits or probes carried out by such organs and institutions as the Ministry of Labour and Social Policy, the Ombudsman's Office or the Helsinki Human Rights Foundation have so far failed to find any evidence of discrimination in the area of social assistance and aid to disaster victims.

That is not to say there is no Romany problem. The problem of Romanies is an important issue to many European countries, including Poland.