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**ECRI CONCLUSIONS  
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS  
IN RESPECT OF POLAND  
SUBJECT TO INTERIM FOLLOW-UP**

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<sup>1</sup> Except where specifically indicated, any developments which occurred after 9 February 2018, the date on which the response of the Polish authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, have not been taken into account in this analysis.

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## FOREWORD

As part of its fifth round of monitoring work, ECRI has renewed its process of interim follow-up with respect to two specific recommendations made in each of its country reports.

In line with the Information Document on ECRI's fifth monitoring cycle brought to the attention of the Ministers' Deputies on 14 November 2012<sup>1</sup>, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

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<sup>1</sup> CM/Del/Dec(2012)1154/4.2.



1. *In its report on Poland (fifth monitoring cycle) published on 9 June 2015, ECRI recommended that the Polish authorities extend the mandate of the Anti-Cybercrime Division of the Criminal Prosecutions Office at the National Police Headquarters to include monitoring of illegal activities aimed at inciting hatred.*

ECRI recalls that at the time of its fifth report, the Polish authorities had stated that the terms of reference of the Anti-Cybercrime Division would be extended to cover criminal activities aimed at inciting hatred.

ECRI notes that on 1 December 2016, the Anti-Cybercrime Division was replaced by the dedicated Anti-Cybercrime Bureau of the National Police Headquarters. The authorities informed ECRI that the mandate of the new Bureau covers various forms of cybercrime under the Criminal Code, including offences of incitement to hatred. Its key tasks are detecting, preventing and combating cybercrime, as well as identifying perpetrators and initiating preparatory proceedings.

In addition, a Coordinator for combating hate crimes at the Anti-Cybercrime Bureau was appointed along with 17 coordinators in anti-cybercrime units operating in all the regional police headquarters and in the Warsaw Metropolitan Police Headquarters. Training has been organised for these coordinators on relevant international standards and on practical aspects of monitoring and combating hate crimes on the Internet.

Furthermore, the authorities informed ECRI that the 17 coordinators have been given the task of conducting “operational reconnaissance” activities, including detecting hate crimes in cyberspace and monitoring the Internet, in particular social websites, Internet forums, blogs, web services of national minority groups and other sites that might feature hate-related content.

ECRI is satisfied with this pro-active approach and considers that its recommendation has been implemented.

2. *In its report on Poland published on 9 June 2015, ECRI recommended that the Polish authorities draft and submit to Parliament legislation, or amendments to existing legislation, in order to enshrine in Polish law the equality and dignity of LGBT persons in all areas of life.*

ECRI indicated in its fifth report that, in order to implement the above recommendation, the authorities should (1) amend the Anti-Discrimination Act to add gender identity to the protected characteristics; (2) ensure that civil status documents can be issued to any person wishing to marry or enter into a civil partnership in other countries where that is permitted, whatever the gender of the future spouse or partner; and (3) allow anyone wishing to change gender or name to do so without having to contest the gender registered by their parents at birth.

As concerns the Anti-Discrimination Act, ECRI notes that it has not been amended to add gender identity as a protected characteristic. Therefore, this part of its recommendation has not been implemented.

The authorities have pointed out that the Anti-Discrimination Act implements Poland’s obligations stemming from several EU Council Directives relating to equality and non-discrimination, which do not refer to gender identity. ECRI recalls that it has always considered that these directives present gaps and do not protect against discrimination on all grounds and in all fields of life. To demonstrate, Polish legislation affords protection against discrimination on grounds of sexual orientation only in the area of employment. While this may comply with the requirements of the directives, ECRI considers it unreasonably restrictive.

Regarding civil status documents, ECRI recalls that Polish law does not provide for same-sex marriage or same-sex civil partnerships. The authorities informed ECRI that, as a consequence, it would not be possible to issue a “marriage eligibility certificate” under the Civil Status Act to a person wishing to conclude a same-sex marriage abroad and that no steps were taken, nor are planned, to change this.

However, ECRI notes that under the same Act, it is possible for a person to be issued with a civil status certificate, which includes the person’s full name, date and place of birth, gender, names of parents, and marital status. While there is no provision for the use of such a certificate by same sex couples in order to get married or enter into civil partnerships abroad, in practice it is possible for the certificate to serve this purpose. Any same-sex marriage or partnership concluded abroad will not be recognised in Poland.

Therefore, ECRI considers that the goal of this part of its recommendation has been achieved.

As for changing one’s gender and name on birth certificates and other identity documents, the authorities informed ECRI that, under Article 189 of the Code of Civil Procedure, a final judgement in the case of sex reassignment provides the basis for changing the sex and name on a person’s birth certificate and national identification number, following which similar changes may be made in other documents. However, the proceedings still involve taking legal action against the parents on the grounds that they wrongly indicated the child’s gender at the time of birth. In addition, legal action must also be taken, where relevant, against the transgender person’s spouse (if not already divorced) and children. ECRI considers these requirements to be particularly harsh and contrary to human dignity.

Further, ECRI notes that the draft legislation referred to in its fifth report designed to facilitate sex and name change procedures (the Gender Recognition Act) was adopted by Parliament in September 2015, but was subsequently vetoed by the President in October 2015 and did not become law. Thus, the situation has not changed since ECRI’s fifth report.

ECRI concludes, overall, that its recommendation has been partially implemented.

