

# **ECRI REPORT ON POLAND**

**(fifth monitoring cycle)**

Adopted on 20 March 2015

Published on 9 June 2015

COUNCIL OF EUROPE



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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002 and those of the third round at the end of 2007, and those of the fourth round will be completed at the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. Except where expressly indicated, it covers the situation at 12 December 2014; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on Poland on 28 April 2010, progress has been made in a number of areas covered by the report.**

Poland has undertaken an analysis of the compatibility of its national legislation with Protocol No. 12 and has adopted an "Act on the implementation of certain provisions of the European Union on equal treatment" which is also extensively in line with ECRI's General Policy Recommendation. This Act, which came into force on 1 January 2011, entrusts the Human Rights Defender with responsibility for protecting the principle of equal treatment. In 2012, the Defender obtained confirmation of the 1999 accreditation, meaning that it complies fully with the Paris Principles.

The Prosecutor General issued various guidelines for prosecutors in October 2012, February 2014 and then in October the same year on, amongst other things, the treatment of hate speech (including online hate speech) and hate crimes. In July 2013, prosecutor's offices were designated in each region and, in each of these offices, two prosecutors were appointed to conduct proceedings relating to cases of hate crime and improve practices in preliminary investigations. Measures were taken against two prosecutors who had failed in their duties regarding the fight against racist crime.

In 2012, Poland started the process of formulating a new integration policy which will apply to all foreigners and will aim to make them socially and economically self-sufficient. The implementation of the governmental programme for the Roma community has brought about an increase in the number of young Roma who complete secondary education. The response regarding the question of illegal settlements has improved. A group of experts has been set up to identify systemic responses at national level to deal with problems that cannot be resolved at the local and regional levels. In addition, a National Action Plan for Equal Treatment 2013-2016 has been adopted and numerous awareness-raising and training activities in connection with racist crimes, intolerance and discrimination have been carried out by the authorities.

Lastly, Poland amended its Act on Safety at Mass Events in 2011, introducing requirements with regard to video recording of sports events, identification and control of access to stadiums. On the basis of the above-mentioned measures taken by the Prosecutor General, the regional prosecutor's office of Bialystok sought the disbandment of a racist football supporters' association.

**ECRI welcomes these positive developments in Poland. However, despite the progress made, some points continue to give rise to concern.**

Homophobic statements are a recurrent feature of political discourse. Hate speech on the Internet has found a new target in the Muslim community, while self-regulatory bodies have difficulty in applying appropriate sanctions against persistently offending media outlets whose racist rhetoric has already been stressed.

The existence of nationalist groups remains a problem; although few in number they are becoming constantly more numerous. This was demonstrated by disturbances on the fringes of the Independence Day celebrations which have increased in scale over the years. These nationalist groups join forces with football supporters' associations or other European extremist movements to disrupt various events.

Despite the initiatives taken by the Prosecutor General to deal more effectively with racist crime, the results have yet to be seen. The number of complaints, preparatory proceedings and indictments is increasing, but not the number of convictions, thus heightening the impression in Polish civil society that the authorities are not fully committed to combating these scourges. In particular, racism at sports events remains

a real problem because few cases of racist crime result in convictions or are the subject of administrative measures.

Lastly, the Criminal Code does not explicitly prohibit incitement to violence, hatred and discrimination, or public insults and defamation, or the making of threats, on grounds of sexual orientation or gender identity. Homo/transphobic violence is present in schools, while homosexuality is still seen by a large section of the population as a disease and transgender persons are subject to certain instances of discrimination in access to healthcare.

**In this report, ECRI asks the Polish authorities to take further measures in a number of areas; it makes a series of recommendations, including the following.**

The Polish authorities should rapidly complete their review of the conformity of Polish legislation with the terms of Protocol No. 12 to the European Convention on Human Rights and propose amendments with a view to its ratification.

They should align the provisions of the Criminal Code with §§ 18-21 of ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. The provisions of the Anti-Discrimination Act should be revised to bring them into line with §§ 6, 8, 9, 14, 16 and 26 of that recommendation. Language, citizenship, gender identity and sexual orientation should be included as prohibited grounds in all relevant provisions. Measures should be taken to ensure that an independent body can deal with cases of racial discrimination between private individuals.

The authorities should promote the effective implementation of the Prosecutor General's guidelines on the fight against hate speech and racist violence and rationalise the system for collecting data and producing statistics on such acts. They should also study extremist violence, including in sport, and produce an action plan for preventing and combating it.

To this end, they should extend the terms of reference of the Anti-Cybercrime Division of the Criminal Service in the National Police Headquarters to include monitoring of illegal activities aimed at inciting hatred.\*

A system for collecting data on equality should be set up and integration programmes should include a programme for raising awareness about, and preventing, racism and racial discrimination. The authorities should speedily adopt the new integration strategy for foreigners and, in particular, alter the arrangements for refugees.

Lastly, the Polish authorities should 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.\* For this purpose, the authorities should make legislative changes to guarantee comprehensive protection on grounds of sexual orientation and gender identity, ensure that the necessary administrative documents can be issued to persons wishing to enter into a same-sex marriage or partnership in another country, and facilitate changes of gender and name. They should also include in the curricula of all branches of education a programme for raising awareness about, and combating, discrimination towards LGBT persons.

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\* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism<sup>1</sup> and racial discrimination<sup>2</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. Poland has neither signed nor ratified Protocol No. 12 despite the recommendations to this effect contained in the 3<sup>rd</sup> and 4<sup>th</sup> ECRI reports. ECRI was informed that responsibility for co-ordinating the decision-making process on this issue had been entrusted to the Minister for Foreign Affairs. He recently asked all the other ministers to conduct a review of Polish legislation in their respective areas of competence with a view to considering whether it is necessary to introduce amendments to bring it into line with the Protocol. ECRI considers that this instrument, which provides for a general prohibition of discrimination, is a key element in the fight against racism and racial discrimination and that its ratification by Poland would be the culmination of the considerable efforts which the country has made in the last few years to strengthen its legislative and procedural framework in this field.

2. ECRI recommends once again that Poland ratify Protocol No. 12 to the European Convention on Human Rights; to this end, the Polish authorities should bring their review of the conformity of national legislation to a speedy conclusion and lay before Parliament any amendments they consider necessary.

##### - Criminal law

3. Most of the provisions of the Criminal Code are consistent with ECRI's General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. The following analysis will therefore focus on recent amendments and persistent shortcomings.

4. ECRI notes that Articles 118, 118a, 119, 256 and 257 of the Criminal Code refer, amongst other things, to ethnic origin, "race" and religion or the lack of religion as characteristics of the victims of the forms of racist behaviour criminalised by these provisions (the term "prohibited grounds" will be used hereafter). Some of these articles also refer to "nationality", but the evidence available to ECRI does not show conclusively that this term is to be understood in the sense of "citizenship"<sup>3</sup>. ECRI also notes that language<sup>4</sup> is not one of the "prohibited grounds" in these provisions.

5. With regard to paragraph 18.a) of GPR No. 7, ECRI notes that Article 256, paragraph 1, of the Criminal Code makes it an offence to incite hatred on the prohibited grounds. As regards incitement to violence, which is also covered by

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<sup>1</sup> According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

<sup>2</sup> According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>3</sup> In one criminal case, the regional court of Bialystok (ref. VII Ka 437/13) held that the slogan "Poland for the Poles" implied the exclusion of representatives of "other nationalities" from social, political and economic life in Poland. Contrary to what the Polish authorities claim, ECRI considers that these words can also apply to persons of another ethnic/national origin.

<sup>4</sup> The Polish authorities consider that skin colour is also covered by the notions of "race" and ethnic origin. They cite as evidence of this a judgment delivered on 30.11.2012 by the regional court of Opole, which found that Article 119, paragraph 1, of the Criminal Code came into play in a case concerning the colour of the victim's skin.

the same provision of GPR No. 7, Article 126a of the Criminal Code penalises incitement to commit offences covered by other articles of the Code which refer to prohibited grounds. These include Article 118 penalising homicide and assault, Article 118a penalising serious persecution committed in the context of an attack on a crowd, and Article 119 penalising violence (and threats). As regards the third offence covered by paragraph 18.a) of GPR No. 7, the Criminal Code contains no provision concerning public incitement to racial discrimination. Incitement to discrimination is only prohibited under civil law.

6. The Criminal Code also criminalises public insults on prohibited grounds in Article 257, but contains no specific provision on public defamation “against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin” (see paragraph 18.b) of GPR No. 7). As regards paragraph 18.c) of GPR No. 7, Article 119 of the Criminal Code penalises the use of threats (and violence) on the prohibited grounds.
7. Article 256.1 of the Criminal Code makes it an offence to promote fascism or any other totalitarian state system. According to the Polish authorities, this article should be understood as penalising incitement to hatred through the assertion of one group’s superiority, the aim being to protect peaceful co-existence.
8. Articles 1, paragraph 1.a, and 55 of the Law on the Institute of National Remembrance penalise exclusively the denial of crimes against humanity or war crimes (as well as Nazi crimes, Communist crimes and crimes against peace) committed against Polish nationals or Poles of other nationalities. ECRI notes that these provisions do not cover the denial of crimes committed against citizens of other countries who are not of Polish ethnic origin. Neither do they cover the public trivialisation, justification or condoning of these crimes with a racist aim, or the denial, trivialisation, justification and condoning of crimes of genocide with a racist aim, as recommended in GPR No. 7, paragraph 18.e).
9. Article 256, paragraph 2, of the Criminal Code makes it an offence to produce and store, for the purpose of dissemination, printed documents, recordings or any other material in connection with the manifestations covered by paragraph 1 of the same article, namely incitement to hatred and public promotion of a fascist or totalitarian state system. Consequently, the Criminal Code does not prohibit the dissemination, production or storage of racist material in connection with incitement to violence and discrimination, public insults and defamation and threats on the grounds mentioned in paragraph 18 of GPR No. 7. Furthermore, Poland does not penalise the distribution of such material.
10. Article 258 of the Criminal Code makes it an offence to participate in, create or lead a group or association for the purpose of perpetrating any offence. The Polish authorities refer to a judgment delivered by the regional court of Bialystok on 31 August 2012 concerning a case in which firm prison sentences were handed down under this article for activities aimed, inter alia, at inciting hatred on the grounds of differences of nationality or religion and insulting the Jewish people. ECRI reiterates the terms of paragraph 3 of the explanatory memorandum to GPR No. 7, which stresses that criminal law has a symbolic effect which raises the awareness of society of the seriousness of racism and racial discrimination and has a strong dissuasive effect. ECRI considers, therefore, that by not referring specifically to the promotion of racism, Article 258 does not satisfy paragraph 18.g) of its GPR No. 7.
11. GPR No. 7, paragraph 18.h), recommends penalising racial discrimination in the exercise of one’s public office or occupation. However, no such provision exists in the Polish Criminal Code.

12. In its fourth report, ECRI recommended once again that the Polish authorities insert into the Criminal Code a provision that would expressly render the racial motivation of any ordinary offence an aggravating circumstance. The Polish authorities consider that this would be incompatible with the philosophy of the Polish criminal law system, which is based on abstract, general rules in order to cover as many situations as possible; they say that, in any event, Polish judges are required to treat racial motivation as an aggravating circumstance under Article 53 of the Criminal Code, which contains sentencing guidelines. ECRI has already referred, in other 5th round reports, to studies showing that, in the absence of an express provision, judges are disinclined to take account of racial motivation. Moreover, such a provision would have a highly symbolic and clearly dissuasive effect, as already explained in § 10 above.

13. ECRI recommends (1) that language and citizenship be added to the prohibited grounds in Articles 118, 118a, 119, 256 and 257 of the Criminal Code; (2) that provisions be included in the Criminal Code establishing the following as offences (i) incitement to discrimination and public defamation on the prohibited grounds with the above additions; (ii) racial discrimination in the exercise of one's public office or occupation; (iii) public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity and war crimes, without any restriction as to the citizenship and ethnic origin of the victim and (iv) involvement in racist groupings as explained in § 10 above; (3) that the scope of Article 256, paragraph 1, of the Criminal Code be widened to prohibit any form of public expression, with a racist aim, of an ideology, whatever it may be, claiming the superiority of one group of people on the prohibited grounds with the above additions ; (4) that a provision be added to the Criminal Code stipulating expressly that racist motivation constitutes an aggravating circumstance of any ordinary offence; and (5) that Article 256 of the Criminal Code be revised to make it clear that the following are also offences: the dissemination, distribution, production or storage of racist material in connection with incitement to violence or discrimination, public insults and defamation, and threats on the prohibited grounds with the above additions.

14. ECRI notes that Article 3 of the Law on the Liability of Collective Entities for Prohibited Acts subject to a Penalty specifies when such an entity can be held liable for an unlawful act committed by an individual acting on its behalf. Under Article 12 of this law, a legal entity can be held liable for the crimes defined in Articles 256-258 of the Criminal Code. ECRI assumes, therefore, that any adaptation of the Criminal Code to give effect to the recommendations in § 13 could be reflected in the provisions concerning legal entities.

- **Civil and administrative law**

15. In its fourth report, ECRI recommended that the Government present comprehensive legislation against discrimination, drawing inspiration from its General Policy Recommendation No. 7, to Parliament as soon as possible. The Act on the implementation of certain provisions of the European Union on equal treatment came into force on 1 January 2011 (hereafter "Anti-Discrimination Act").

16. In its conclusions on the implementation of the recommendations subject to interim follow-up in March 2013, ECRI noted that the Act does not prohibit discrimination on grounds of language and citizenship<sup>5</sup> in general, or discrimination on grounds of religion in the fields of health, education and higher education. ECRI also considered that the Act should place public authorities under a duty to promote equality and to prevent discrimination in carrying out

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<sup>5</sup> On the question of nationality and citizenship, see § 4 above.

their functions. ECRI notes that no progress has been made since the conclusions of March 2013 except for a proposed amendment to the Anti-Discrimination Act aimed at including the prohibition of discrimination by association, which has apparently been laid before Parliament (legislative file no.1051). ECRI notes that this initiative covers neither segregation nor the announced intention to discriminate, which, under paragraph 6 of its GPR No. 7, are considered as forms of discrimination to be prohibited.

17. In addition to the Anti-Discrimination Act, there are other provisions of civil and administrative law which can contribute towards combating racism and racial discrimination. For example, under Article 3, paragraph 3, of the Public Procurement Act, in the case of a private-public partnership, a public body may subject the granting of funds to the private one (which would not normally be bound by the Act) to the obligation to use the monies in full respect of the principle of equal treatment. . ECRI observes, however, that under paragraph 9 of its GPR No. 7, “the law should place public authorities under a duty to ensure that [...] parties to whom they award [...], grants, [...] respect and promote a policy of non-discrimination.” Moreover, this obligation should extend to the award of contracts, loans and other benefits by public authorities. Contrary to what the Polish authorities argue, the fact that public contractors are in any event obliged to respect the prohibition of discrimination under the Labour Code is not enough for the purposes of paragraph 9 of GPR No. 7.
18. As regards paragraph 14 of GPR No. 7, ECRI notes that Article 18, paragraph 3, of the Labour Code provides that provisions of employment contracts or other employment documents which are contrary to the principle of equal treatment in employment shall be null and void, that the relevant provisions of labour legislation must be applied in place of them and that, if such provisions exist, they must be replaced by other, non-discriminatory provisions. ECRI notes, however, that Polish law contains no provisions making it possible to amend discriminatory provisions or declare them null and void in the other fields referred to in GPR No. 7, such as internal regulations of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions.
19. As regards paragraphs 17 and 18 of GPR No. 7, ECRI notes that Article 13 of the Constitution bans racist political parties and organisations. Under the Political Parties Act, the Constitutional Court has jurisdiction to find a political party’s aims unconstitutional and, on that basis, the Warsaw District Court, which is responsible for keeping the register of political parties, could refuse to register a new party or could order the striking-off of a party already registered, which, under Article 31, paragraph 3, of the Political Parties Act, would mean the withdrawal of public funding. As far as other organisations are concerned, ECRI notes that Articles 28 and 29 of the Associations Act provide for checks to establish whether the activities of associations meet the legal requirements. Should this not be the case, provision is made for a series of measures, including the possibility of dissolving an association. ECRI considers that, as recommended in its GPR No. 7, the law should make explicit provision for the withdrawal of public funding from any organisation or political party promoting racism, as a separate measure from its dissolution, independently of any criminal proceedings.
20. Lastly, ECRI reiterates that, according to paragraph 26 of GPR No. 7, the law should guarantee free legal aid. ECRI notes that impecunious plaintiffs may be exempted from procedural costs and are entitled to the services of a court-appointed lawyer. ECRI further notes that the Law on protection and assistance for victims and witnesses in criminal proceedings was adopted in November 2014, and that the Ministry of Justice is drawing up a draft law on a system of free legal aid and information.

21. ECRI recommends (1) that citizenship, language and religion be included among the prohibited grounds in all fields in which protection against discrimination is guaranteed by the Anti-Discrimination Act; (2) that segregation, discrimination by association and the announced intention to discriminate be added to the forms of discrimination enumerated in the Anti-Discrimination Act; (3) that the duty of public authorities to promote equality and prevent discrimination in carrying out their functions be added to the Anti-Discrimination Act; (4) that the law makes it obligatory for parties awarded contracts, loans, grants or other benefits by the public authorities to observe a policy of non-discrimination, extending this obligation to the promotion of such a policy and providing that the violation of this condition may result in the termination of the contract, grant or other benefit; (5) that provisions be introduced making it possible to amend or declare null and void any discriminatory provisions contained in internal regulations of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions; (6) that provisions be introduced into the Associations Act and/or the Political Parties Act making it possible to withdraw public funding from any organisation or political party which promotes racism; and (7) that the current proposals concerning the introduction of a comprehensive system of free legal aid for victims of discrimination wishing to take legal action and lacking adequate resources be carried through to completion.

- **Specialised independent authorities (GPRs Nos. 2 and 7)**

22. In its fourth report, ECRI recommended that the authorities ensure that an independent body is entrusted with all the powers which the specialised body for combating racism and racial discrimination should have under General Policy Recommendations Nos. 2 and 7. In its conclusions on implementation of the recommendations subject to interim follow-up adopted in March 2013, ECRI noted that Article 18 of the Anti-Discrimination Act entrusts the Human Rights Defender and the Government Plenipotentiary for Equal Treatment with the task of “implementing the principle of equal treatment”, while observing that the latter is not an independent body.
23. Under Article 1 of the Act on the Human Rights Defender as amended by the Anti-Discrimination Act, the Defender’s office is a specialised independent state authority for the protection of human rights and civil liberties and the principle of equal treatment. This body satisfies the terms of GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level; in November 2012 it received confirmation of the level “A” status, obtained in 1999, from the International Coordinating Committee of National Human Rights Institutions, meaning full compliance with the Paris Principles.
24. ECRI notes that the provisions of the Anti-Discrimination Act dealing with the Human Rights Defender are for the most part consistent with GPR No. 2. One aspect which is not specifically mentioned in the Act is the function of promoting and contributing to the training of certain key groups, but ECRI knows that this is something which takes place in practice. One example is the recent project carried out in collaboration with the Commander-in-Chief of the National Police, non-governmental organisations and the Government Plenipotentiary for Equal Treatment aimed at producing a handbook entitled “People first: anti-discrimination measures in national police units” and providing training there for police officers involved with these issues. Another is the conference organised in 2012 in co-operation with the National Prosecutor’s Office, which led in 2013 to a publication entitled “Victims of hate crime”.
25. Where disputes between private individuals are concerned, the Polish authorities acknowledge that the Human Rights Defender cannot conduct investigations in response to complaints concerning cases of discrimination. However, in the

recent legislative work in connection with the drafting of the Anti-Discrimination Act, it was stated that the Human Rights Defender's mandate included the possibility of helping the victims of discrimination by informing them of the remedies available under the Act and even by initiating the action of other competent authorities. Article 14 of the Human Rights Defender Act empowers the Human Rights Defender to bring legal proceedings. Two examples – one of which concerns the online auctioning of Third Reich artefacts, in connection with which the Defender had taken part in a civil case – bear witness to the positive role played by the Defender in disputes between private individuals. ECRI is pleased to know that the Defender can bring proceedings in cases involving private individuals, but considers that there is a major shortcoming to the extent that the Defender cannot conduct investigations in response to complaints concerning cases of discrimination between private individuals.

26. ECRI recommends that the authorities amend the Anti-Discrimination Act in order to make it clear that the Human Rights Defender has jurisdiction to conduct investigations in response to complaints concerning cases of racial discrimination between private individuals. An alternative solution would be to establish an independent equality authority dealing inter alia with racial discrimination, as recommended by ECRI in its GPRs No. 7 on national legislation to combat racism and racial discrimination and No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

## **2. Racial and homo/transphobic hate speech<sup>6</sup>**

### **- Treatment of homo/transphobic hate speech in the Criminal Code**

27. Neither paragraph 1 of Article 256 of the current Criminal Code prohibiting incitement to hatred, the propagation of fascist or totalitarian ideology and the production and dissemination of racist material, nor Article 257 prohibiting public insults, specifically mentions sexual orientation<sup>7</sup> or gender identity<sup>8</sup> among the prohibited grounds. ECRI notes that several proposed amendments to the Criminal Code were introduced in 2011. Two of them concern the addition of gender identity and sexual orientation, among others, to the grounds enumerated in Articles 256 and 257, among others. The third amendment, introduced by the Civic Platform party in 2012, concerns the replacement of the existing grounds in these articles with wording referring to the victim's "natural or acquired personal qualities or beliefs".

28. ECRI recommends that sexual orientation and gender identity be explicitly added to the prohibited grounds in Articles 256 and 257 of the Criminal Code.

### **- Political discourse**

29. In its fourth report, ECRI noted that significant progress had been made at the political level towards recognising the rightful place of historical (ethnic, religious and linguistic) minorities in Poland. It recommended that the authorities continue to stress Poland's inclusive character. It further recommended that intolerant

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<sup>6</sup> This section deals with racist, homophobic and transphobic discourse. For a definition of hate speech, see Recommendation R (97) 20 of the Committee of Ministers to member states on hate speech, adopted on 30 October 1997.

<sup>7</sup> "Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender." Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.

<sup>8</sup> "Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms." Ibid.



political statements be met with the appropriate response by all public officials concerned.

30. The situation remains largely unchanged today. ECRI must, however, draw attention to the issue of hate speech based on sexual orientation and gender identity (one of the topics of the fifth cycle). In this connection, reference is made to homophobic views expressed in parliamentary proceedings concerning the draft legislation on civil partnerships; the statement by a former Government Plenipotentiary for Equal Treatment concerning the dismissal of a homosexual teacher; the statements by a former President of the Republic during a television broadcast about the presence of homosexuals in Parliament, and inappropriate comments about a transsexual MP made by another MP, which were repeated and supported on Radio Maryja, belonging to the Warsaw Congregation of the Most Holy Redeemer (see §§ 33 and 40).

- **Extremism**

31. In its fourth report, ECRI also noted the existence of openly antisemitic extremist parties, while stressing that their importance was marginal. This phenomenon has not abated, as shown by the founding of the National Movement (Ruch Narodowy) in November 2012 and of Together - Party of the Slavonic Empire (Partia Imperium Słowiańskiego "Razem") in March 2013, coming on top of the organisations already listed in the fourth report, such as Polish National Rebirth (Narodowe Odrodzenie Polski), the National Radical Camp (Obóz Narodowo-Radykalny), the Nationalist Association Zadruga (Stowarzyszenie Nacjonalistyczne Zadruga), All-Polish Youth (Młodzież Wszechpolska) and the Polish Defence League (Polska Liga Obrony). Even if these parties and groups remain a minority, ECRI notes that they have increased their ability to mobilise. Some of them have organised into international networks; others have established links with associations of racist football supporters and, in particular, hooligan groups whose activities are characterised by the frequent disruption of public order (see § 52).
32. Regarding their ability to mobilise, both the number of extremist demonstrations organised in connection with the Independence Day commemorations and the number of participants in them are increasing constantly (according to some estimates,<sup>9</sup> there were less than 500 ultra-nationalist participants in 2009, 10 000 in 2010 and 20 000 in 2012). As regards their local ramifications, it may be noted for example that, in Poznan in June 2014, various extremist organisations, with the help of football club supporters<sup>10</sup> and, again, the complicity of hooligan groups, carried out protests which resulted in the cancellation of a performance of the play "Golgotha Picnic", for fear of public disturbances; in March 2013, Polish National Rebirth (Narodowe Odrodzenie Polski) and the supporters' association of the football club Slask Wroclaw created disturbances during a lecture by the sociologist Zygmunt Bauman at the University of Wroclaw; this case also illustrates the international ramifications of extremist movements because, in June 2014, leaflets criticising this sociologist's political convictions were distributed during another lecture which he gave at the University of Manchester in the United Kingdom. In November 2012, members of the Hungarian far-right movement Jobbik took part in the Independence Day commemorations organised by those associations.

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<sup>9</sup> See Searchlight, December 2012, pages 16-17.

<sup>10</sup> The Wielkopolska Patriots Association (Stowarzyszenie "Wielkopolscy Patriotci"), the National Movement (Ruch Narodowy), the Dzierzoniow Patriots Association (Stowarzyszenie Patriotyczne Dzierzoniów), the Gniezno Patriots Association (Stowarzyszenie "Gnieźnieńscy Patriotci") and the supporters' associations of the football clubs Slask Wroclaw, Lechia Gdansk and Lech Poznan.

- **Racism on the Internet and in the media**

33. ECRI considers that the situation with regard to hate speech on the Internet and in the media has not improved either since its last report. Racist and xenophobic comments are a common occurrence on online discussion forums. The scale of the phenomenon was described in a report produced by the Local Knowledge Foundation in June 2011<sup>11</sup>. According to this report, of 10 million postings analysed, it was possible to classify 123 000 as falling within the scope of hate speech, the main targets being Jews (35 000 postings), Russians (21 600) and Germans (21 500). ECRI also notes a rise in Islamophobic sentiment, as reflected in the content of the Polish Defence League's (Polska Liga Obrony) website, its presence on YouTube and the continuous, rapid increase in the number of supporters of its Facebook site<sup>12</sup>. ECRI also observes that, despite its recommendation to the Polish authorities in the fourth cycle, the radio station "Radio Maryja" continues to draw attention to itself with its rhetoric of intolerance (see § 40).
34. ECRI noted in its fourth report that sporting events were all too often marred by manifestations of racism and antisemitism. According to the information obtained by ECRI, the situation has not improved and continues to give rise to concern. This point is analysed in detail below (see §§ 82-89).

- **Authorities' response**

35. As already mentioned, Article 256, paragraph 1, of the Criminal Code makes it an offence to incite hatred on grounds of nationality, ethnic origin, "race", religious differences or the lack of a religion. Hate speech directed at a person's sexual orientation or gender identity is not explicitly designated an offence under the Criminal Code (see § 27).
36. According to the report *Hate Crimes in the OSCE Region: Incidents and Responses 2012*, the National Police Headquarters, the Prosecutor General's Office, the Ministry of Justice and the Interior Ministry's Department of Control, Complaints and Petitions collect data on hate speech. The crime statistics compiled by the police, the Prosecutor General's Office and the Ministry of Justice are kept in accordance with the relevant provisions of the Criminal Code. The General Prosecutor's Office has developed a more sophisticated system in which cases can be differentiated according to the reasons for which the acts were committed.
37. The authorities informed ECRI that, according to the police, 48 cases were brought in 2009 under Article 256, paragraph 1, of the Criminal Code; 54 in 2010; 81 in 2011; 86 in 2012; and 267 in 2013. This information can be compared with the figures provided by the Ministry of Justice in connection with Article 256: 17 prison sentences and 2 cases of conditional discontinuation were handed down in 2009; 7+0 in 2010; 9+1 in 2011; and 21+3 in 2012. It should be noted that data on homophobia and transphobia are collected by the Ministry of the Interior and that these data show eight cases in 2013 (including three cases of violence and four cases of incitement to hatred) and four in 2012 (including one case of violence). From its examination of these data, it would appear to ECRI that the conviction rate has decreased in the last few years, providing an objective basis for the impression of impunity expressed by vulnerable groups and representatives of civil society.

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<sup>11</sup> Polskie Radio 2012 and HFHR 2014.

<sup>12</sup> Some 4 700 "likes" in April 2014 and 7 900 in September of the same year.

38. The Polish authorities told ECRI that they were aware of the problem and had taken the following measures in response to the 4th report recommendations. In 2010, the relevant recommendations were circulated among prosecutors and the Prosecutor General's Office produced an analysis of cases of racism on the Internet which had been dealt with inappropriately. A summary report of the findings was distributed in June 2012 and, on that basis, instructions were given to familiarise all prosecutors both with the methods to be employed in dealing with such cases, to ensure that cases were not closed because of a failure to identify those responsible or a lack of evidence, and with good practices for using little-used forms of evidence, collecting and obtaining evidence, handling proceedings and preparing indictments. The same basis was used for requesting the re-institution of stayed proceedings or even the institution of fresh proceedings. In October 2012, the Prosecutor General issued guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint, which refer partly to the handling of cases of online hate speech and whose aim is, among other things, to encourage prosecutors to examine whether there is public interest in such cases to institute ex officio proceedings after the private bill of indictment has been submitted. The Prosecutor General's Office set up training courses to supplement the existing training provision on hate crime, aimed at prosecutors leading such proceedings. The Polish authorities also stated that the terms of reference of the Anti-Cybercrime Division would be extended to cover criminal activities aimed at inciting hatred. ECRI hopes that these wider terms of reference will make it easier to detect attempts to organise demonstrations designed to incite hatred or planned acts of racist violence, as well as to disband associations promoting racism.
39. In its fourth report, ECRI also recommended that the Polish authorities take an active stance in collecting evidence that would warrant the disbanding of groups promoting racism. In February 2014, the Prosecutor General issued guidelines on the conduct by prosecutors of proceedings in cases of hate crimes; these require prosecutors, where this is justified by the evidence collected in criminal proceedings, to take appropriate non-criminal measures, including seeking the prohibition of organisations operating in breach of Article 13 of the Constitution. It was on this basis that, for example, the regional prosecutor's office in Bialystok recently sought the disbandment of a football supporters' association. ECRI welcomes<sup>13</sup> this measure while reiterating that the evidence necessary to order the disbandment of such groups does not necessarily have to justify criminal proceedings against their members.
40. In its fourth report, ECRI recommended that the National Broadcasting Council show increased vigilance concerning racism within its field of competence and urged it to raise public awareness about the existence of the complaints mechanism through targeted information and advertising campaigns. The National Broadcasting Council (KRRiT) has demanded that Radio Maryja refrain from broadcasting intolerant statements on two occasions, and on Programme 1 of Polish Radio on one occasion. It has also imposed various financial penalties on Eska Rock and TVP 2. In addition to these administrative measures, the KRRiT has taken a series of measures to educate a broad public about the rules of conduct applicable to the media where hate speech is concerned, raise awareness of its existence and make it easier to lodge complaints. ECRI notes an increase in the number of complaints lodged (from 1591 in 2009 to 2200 in 2013). The KRRiT has also drawn up a "Regulatory Strategy 2014-2016", whose aims include establishing co-operation with the Government Plenipotentiary for

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<sup>13</sup> ECRI notes, however, that the Constitutional Court decided in a judgment of 6 April 2011 to discontinue the proceedings commenced following an application by the Warsaw Regional Court asking it to consider whether the symbols and activities of the organisation Polish National Rebirth (Narodowe Odrodzenie Polski) were consistent with the Constitution.

Equal Treatment to ensure that fuller account is taken of the principle of equal treatment in the media.

41. Other awareness-raising and preventive activities have been conducted, such as the “Equal Opportunities Media” project implemented by the Government Plenipotentiary for Equal Treatment and the creation of a website on hate speech<sup>14</sup> under an EEA (European Economic Area) funded “Citizens for Democracy” programme aimed at supporting the development of civil society and increasing the role of civil society in building social justice by addressing such issues as the fight against hate speech, racism, xenophobia, homophobia and antisemitism and the promotion of tolerance and better understanding between cultures.
42. Lastly, ECRI notes that hate speech is regularly the subject of statements by senior political figures, such as the condemnation by the President and the Prime Minister of the extremist violence which marred the Independence Day celebrations in November 2012 or the reactions of the new Government Plenipotentiary for Equal Treatment to homo/transphobic remarks made in Parliament.
43. In conclusion, ECRI notes that the Polish authorities have generally taken account of its recommendations and, on that basis, have taken a whole range of measures to ensure, inter alia, that cases of online hate speech are dealt with more effectively. This may partly explain the increase in the number of cases processed through the courts. However, the measures taken, in particular by the Prosecutor General, are recent and have probably not yet had their full effect. ECRI considers, therefore, that the Polish authorities should continue their efforts to ensure that conclusive results are rapidly obtained, particularly as regards preventing extremist groups from spreading their racist and intolerant ideology in society.
44. ECRI recommends that the Polish authorities (1) draw up and implement a comprehensive plan for training police officers and prosecutors in the application of the Prosecutor General’s guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes; (2) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (3) incorporate into the statistical system indicators for monitoring the effectiveness of the judicial system in dealing with hate speech cases; and (4) mount a large-scale campaign for tolerance addressed to society at large, as already recommended in the 4th cycle report.
45. ECRI recommends 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.

### **3. Racist and homo/transphobic violence**

#### **– Treatment of homo/transphobic violence in the Criminal Code**

46. Neither paragraph 1 of Article 118 of the current Criminal Code prohibiting homicide, nor paragraph 1 of Article 119 prohibiting violence, nor paragraph 2 of Article 255 prohibiting incitement to crime, refers specifically to sexual orientation or gender identity among the grounds for hatred. ECRI notes that the various proposed amendments to the Criminal Code referred to above (see §27) are aimed also at amending Article 119 in relation to these prohibited grounds.

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<sup>14</sup> [www.mowanienawisci.info](http://www.mowanienawisci.info).

47. ECRI recommends that sexual orientation and gender identity be added to the prohibited grounds in Articles 118, 119 and 255 of the Criminal Code.

– **Scale of the problem of racist and homo/transphobic violence**

48. In its fourth report, ECRI noted that Poland was not confronted with a particular racist violence problem.
49. As mentioned above, the Criminal Code deals with violence towards an individual or group of individuals on grounds of nationality or ethnic origin, on political or religious grounds, or on the grounds of lack of a religion, in the same provisions as those dealing with threats (see §§ 5 and 6). As a result, cases of violence cannot be clearly distinguished from the other forms of racist crime on the basis of the statistical data provided by the Polish authorities.
50. The Polish authorities provided ECRI with data and statistics on cases of racist violence. According to the Ministry of the Interior, there were 16 cases in 2009, 13 in 2010, 10 in 2011, 16 in 2012 and 37 in 2013. The Prosecutor General's Office investigated 13 cases under Article 119 in 2009, 18 in 2010, 31 in 2011, 51 in 2012 and 102 in 2013. According to the Ministry of Justice, there were 17 convictions under Article 119 in 2009, 10 in 2010, 4 in 2011 (plus 2 cases of conditional discontinuation) and 10 in 2012 (no data available yet for 2013). Data relating to homophobia and transphobia are collected by the Ministry of the Interior (see § 37 above).
51. The report *Hate Crime in the OSCE Region: Incidents and Responses 2012* also contains information gathered from other sources. The Never Again Association, for example, reports a few cases of violence towards groups of concern to ECRI (Jews, Roma and LGBT groups). Lastly, ECRI received information suggesting that isolated acts of racist violence are not always reported to the authorities.<sup>15</sup> In this connection, the authorities state that their awareness-raising activities have helped reduce the level of under-reporting (see § 59).
52. ECRI considers it important to mention the acts of violence at events organised in Warsaw to celebrate Independence Day in 2011, 2012, 2013 and 2014 (see the chapter on hate speech). These events, which are organised by nationalist groups independently from the official parade under the auspices of the President of the Republic, attract groups of hooligans provoking disturbances to the public order. In the rest of the country, beyond the events of 11 November, several acts of violence were recorded, targeting either representatives of ethnic minorities and LGBT movements or property, such as Jewish cemeteries, synagogues and various other monuments, as well as acts of racist violence at a regional women's forum (Gydnia, 13 April 2013).
53. ECRI would like to stress that the city of Bialystok and the surrounding area have also been the scene of outbursts of racist violence in recent years. In August 2011, a fire was started at the entrance to a Muslim cultural centre.<sup>16</sup> In September 2009, November 2012 and April 2013, attempts were made to set fire to the doors of Chechen families' homes.<sup>17</sup> On 8 May 2013, unidentified persons tried to set fire to a flat where a Polish family of Indian origin were living.

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<sup>15</sup> In this connection, see also the results of research carried out by the European Union Agency for Fundamental Rights (FRA) in all the EU countries, which shows that, in many cases, the victims of hate crime do not lodge a complaint (FRA 2013b).

<sup>16</sup> Kornak 2013: 179.

<sup>17</sup> Ibid. See also [www.red-network.eu/?i=red-network.en.items&id=328](http://www.red-network.eu/?i=red-network.en.items&id=328).

– **Authorities’ response**

54. In its fourth report, ECRI recommended that the authorities integrate their systems for collecting statistics on racially motivated offences.
55. ECRI also noted the setting up of a monitoring unit in the Ministry of Internal Affairs and Administration with a lot of potential for studying racism and proposing concrete action. According to the Polish authorities, this unit was given a wider mandate in 2011. As a result, the group responsible for monitoring racism and xenophobia now collects information from NGOs and reports from the national police. In 2013, it established more detailed analytical procedures and its work as a whole serves as a basis for various other governmental bodies, including the Interior Ministry’s Department of Control, Complaints and Petitions and the national police, inter alia for setting up training courses under the police anti-hate crime programme. Furthermore, a body known as the “Council against Racial Discrimination, Xenophobia and Related Intolerance” has set up a working group consisting of representatives of various governmental bodies and non-governmental organisations (such as the Campaign against Homophobia and the Never Again Association) to make a preliminary study of a platform which would make it possible to monitor hate crime more effectively. Two proposals have been made, without, however, receiving the approval of the Ministry of Administration and Digitalisation. According to the Polish authorities, a fresh impetus will be given to this working group.
56. As well as issuing guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes (see section on hate speech), the Prosecutor General decided in 2013 to designate within each regional prosecution service one or two district prosecutor’s offices responsible for conducting preliminary investigations in hate crime cases and, within each of these offices, two specially-tasked prosecutors, the aim being to improve practices for collecting evidence to establish the identity of offenders, determining whether offences are racially motivated, instituting proceedings, and sentencing. ECRI notes with satisfaction that this measure complements the initiative of appointing consultant prosecutors in the appeal courts, which was already mentioned in its fourth report. Measures were also taken against two prosecutors who had failed in their duties regarding the fight against racist crime. The ECRI delegation was informed that in the first case, a district prosecutor in Bialystok-North had recently submitted his resignation. In the second case, proceedings had been conducted against a prosecutor in Bialystok following his refusal to investigate the painting of swastikas on electricity substations. Following his acquittal, an investigation was carried out to ascertain the reasons for this decision.
57. In the police, the network of human rights plenipotentiaries, whose appointment was noted by ECRI in its fourth report, has had its functions extended to include promotion of the principle of equal treatment. Various actions have been taken to educate and train police officers in, among other things, establishing better contact with the population with regard to cases of racism. As early as 2010, this network was instrumental in changing the recruitment and selection procedures for police officers so as to exclude candidates with intolerant or racist attitudes. Among other initiatives, ECRI was informed of a joint project with the Human Rights Defender and the Government Plenipotentiary for Equal Treatment which resulted in a publication entitled “People first: anti-discrimination measures in national police units”.
58. With regard to education and prevention, various measures have been taken at national level to raise awareness among the public at large about their rights and

what action to take when those rights are not respected. For example, an information and awareness-raising campaign entitled “Racism: Say it to Fight it” has been under way since March 2014. One of its results has been the creation of a website<sup>18</sup> in 10 languages giving useful information and specifying what action to take in the event of a racist crime.

59. As mentioned above, the city of Białystok has seen an upsurge in acts of racist violence in the last few years. In addition to the general measures just described, the local and regional authorities have also acted in response to the increase in racist violence. Existing initiatives have been stepped up and new actions have been specifically taken, often in co-operation with NGOs, to educate, inform and train not only public officials involved in any capacity in the fight against racism and discrimination, but also the population at large and vulnerable groups themselves. The NGOs met by the ECRI delegation confirmed that they have indeed been involved in initiatives taken in this connection, but they also said that the response of the local and regional authorities was late in coming and that the scale of the measures taken was not commensurate with the situation, leading them to wonder whether the authorities were really determined to tackle the problems at root. They recognised, however, that these measures had produced results and that people’s perceptions and attitudes with regard to the issue of racism were changing. ECRI considers that this may explain the increase in the number of complaints in 2012/2013, including cases going back as far as 2008 which had never before been reported (see § 51 above).
60. As regards the racist violence occurring on the occasion of the Independence Day celebrations, proceedings concerning an incident coming under Article 256 were discontinued in 2010. In 2011-2013, no proceedings were brought under Articles 118, 119, 126a or 256 of the Criminal Code, but there were 51 cases concerning acts mainly classified as acts of hooliganism, 21 of which resulted in an indictment (see § 52). Regarding similar incidents occurring outside of Warsaw, several cases were brought under the articles of the Criminal Code dealing with racist offences (particularly Articles 256 and 119), some of which led to indictments (e.g. in Białystok in April 2014 and in Wrocław in June 2014). ECRI considers that the role and behaviour of extremist organisations need to be properly understood and that a strategy should be put in place so that misbehaviour can be prevented and dealt with more effectively.
61. ECRI recommends that the Polish authorities (1) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (2) reinforce the group set up by the Council against Racial Discrimination, Xenophobia and Related Intolerance to study the real scale of the hate crime phenomenon; and (3) study, in consultation with civil society, the phenomenon of extremist violence occurring on the fringes of the Independence Day celebrations and draw up a comprehensive action plan for preventing and combating it.

#### **4. Integration policies**

62. Various policies have been adopted in Poland to help groups of concern to ECRI: historical national and ethnic minorities (including Roma of Polish nationality); persons under international protection; and other migrants (including Roma of other nationalities). Policies for historical minorities focus mainly on preserving their identity. The integration of Roma was the subject of a government programme for that community for the years 2004-2013, which was followed by an integration programme for the years 2014-2020. The integration policies for

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<sup>18</sup> [www.reportracism.pl](http://www.reportracism.pl).

persons under international protection consist of individual integration programmes focusing, inter alia, on linguistic training and the provision of personalised advice. For migrants and foreigners in general, apart from arrangements for promoting the learning of the Polish language, there is no overall integration policy. However, the authorities have started work on developing a new integration policy which will be aimed at all foreigners and cover all fields.

63. The Polish authorities say that they do not collect data on equality in a general and systematic way. Data on the number of individual integration programmes is collected each year, including information concerning the number of people participating in them, funds spent and welfare benefits provided. Lastly, the National Action Plan on Equal Treatment 2013-2016 contains a specific objective providing for the development of a set of key indicators for monitoring the situation of vulnerable groups in terms of discrimination. ECRI considers that work on defining and developing such indicators should be continued without delay because, without data and statistics, it is impossible to identify the problems which need solving.
64. ECRI notes that government funding of projects submitted by associations to preserve the identity of historical minorities or promote their cultural heritage, as provided for in Article 18, paragraph 2, of the Act on National and Ethnic Minorities and on the Regional Language, has increased constantly over the years, rising from a total of 139 million zloty (approximately 33 million euros) in 2007 to 253 million in 2011 (approximately 60 million euros)<sup>19</sup>. ECRI notes that paragraph 10 of this article refers explicitly to actions to promote the civic integration of minorities. The Polish authorities have indicated that this provision does not allow for the funding of projects related to the fight against racism, intolerance and racial discrimination, but that this could be done through other mechanisms such as the Law on activities for the public benefit and volunteer work and, on this basis, the "Civic initiatives Fund" programme operated by the Ministry of Labour and social Policy, or as a fund contributed to jointly by Poland and the Swiss Federal Administration to reduce social and economic disparities in Europe. However, during its visit to Bialystok, the ECRI delegation found that proposals for projects aimed at combating racism, intolerance and discrimination had been submitted by local NGOs and that several of them had not been accepted by the authorities, without any reasons being given.<sup>20</sup> For ECRI, this points to possible shortcomings in the implementation of these support arrangements for historical minorities, which the authorities should accordingly take steps to rectify.
65. In connection with Roma (as an ethnic minority as defined in the Act on National and Ethnic Minorities and on the Regional Language) and the new programme for their integration (2014-2020), adopted in October 2014, ECRI reiterates the recommendation set out in its fourth report: the authorities should provide training to Roma NGOs wishing to submit projects as part of the implementation of the programme for the Roma community in Poland. It added that voivodeships should follow closely the number and nature of projects submitted by each mayor within their jurisdiction. The Polish authorities confirmed that the voivodeships assess applications, draw up contracts, monitor the progress of projects and grant funding. They are supported in this task by the voivodeship plenipotentiaries for national and ethnic minorities, who, by virtue of their position, are aware of the needs and situation of Roma communities in the voivodeships. ECRI notes that the number of Roma NGOs involved in the implementation of the

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<sup>19</sup> ACFC 2013: 54 et seq.

<sup>20</sup> ACFC 2014a: §§ 61 and 64.



2004-2013 programme rose from 12 in 2004 to 79 in 2013. ECRI also notes that 160 municipalities in which Roma live (i.e. almost all of the municipalities in question) are involved. ECRI further notes that this new programme will be subdivided into local multi-annual strategies and that it provides for one Roma organisation to work together with each local authority involved in the implementation of these strategies. ECRI reiterates the need to ensure that all the municipalities concerned participate fully in the new programme.

66. In its fourth report, ECRI also recommended that the authorities continue their efforts to support the education of Roma children. The evaluation of the governmental programme for the Roma community 2004-2013 shows that 64% of the programme's activities focused on educational projects. In 2012, the FRA published the findings of a survey<sup>21</sup> carried out in 2011 on the situation of Roma in 11 EU member states. It can be seen from this report that Poland obtains the second-best result of the 11 countries covered by the survey, with 26% of Roma aged 20-24 having completed secondary education. However, in its third opinion on Poland, adopted on 28 November 2013, the Advisory Committee of the Framework Convention for the Protection of National Minorities noted that few Roma children continued their education beyond primary level (over half the Roma living in Poland failed to complete their primary education, as compared with 3.6% nationwide)<sup>22</sup>, and that a disproportionate number of Roma children were still placed in special schools on the basis of certificates attesting to various disabilities (8.4% in 2013/2014, as compared with 3% for the total number of pupils, according to data from the education information system).
67. The Advisory Committee also noted that progress had been made in access to housing, infrastructure and health care, but that a large proportion of Roma remained excluded from the labour market. The unemployment rate for Roma was 30% as compared with 11% nationwide, indicating a pattern of discrimination not only in relation to the Polish majority, but also in relation to other national minorities. Lastly, the Advisory Committee observed that Roma representatives continued to report ongoing discrimination in access to suitable social housing, health care, racial profiling by the police and discriminatory attitudes on the part of local administrative and law enforcement authorities, and that biased media reporting had, on a number of occasions, fuelled local conflicts, which in some cases had escalated into physical attacks against Roma and their property<sup>23</sup>. ECRI sees this situation as possibly revealing a major shortcoming in the programmes for Roma insofar as these programmes do not make sufficient provision for information and prevention relating to racism and racial discrimination.
68. ECRI notes that individual integration programmes apply only to persons under international protection. ECRI noted in its fourth report that NGOs and the beneficiaries themselves considered that the duration of these programmes – 12 months – was not long enough. It therefore recommended that the authorities examine the question of extending the period of integration assistance and make sure that beneficiaries receive adequate vocational and linguistic training. Indeed, ECRI considers that the design of these individual integration programmes is unsuitable for addressing the full range of problems encountered by their beneficiaries. Access to the labour market – a crucial factor in promoting integration – proves to be the most problematical aspect. The main obstacle to finding employment is a poor command of Polish and failure to satisfy the

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<sup>21</sup> FRA 2012b.

<sup>22</sup> ACFC 2014a: §§ 49-52 and 143-146.

<sup>23</sup> Ibid., §§ 49-52.

qualifications required by employers. Other problems, such as illiteracy or chronic illness, cannot be properly dealt with in 12 months<sup>24</sup>.

69. Where other foreigners are concerned, integration policies are, for the most part, currently restricted to the provision of linguistic training and catch-up classes. ECRI notes in this connection that the National Action Plan for Equal Treatment 2013-2016 includes a set of objectives relating to the education of children from immigrant backgrounds. According to the statistics provided by the authorities, of a total of around 4 335 000 students enrolled in state schools in the 2013-2014 academic year, 8 174 were foreign students. Of these, 1 807 received extra tuition in Polish and 554 attended catch-up classes.
70. In 2012, the Council of Ministers issued a document entitled “Polish migration policy – the current position and action requested”. This document suggests extending the concept of integration to cover all foreigners. Detailed objectives are set in this document, such as: transforming integration from a system of welfare benefits into a system enabling foreigners to achieve self-sufficiency; increasing co-operation and consultation with immigrant communities and non-governmental organisations; the provision of information by the state on residence and employment conditions; developing welcome programmes enabling newly arrived migrants to find their way around local institutions and familiarise themselves with legal procedures or with the culture of everyday life at local level; envisaging the possibility of granting the right to vote at local level to foreigners holding an indefinite residence permit; and training civil servants, police officers and border officials in the specific aspects of working with foreigners. The document also identifies a series of objectives aimed at ensuring respect for foreigners’ rights, preventing all forms of discrimination in the different areas of life, increasing teachers’ intercultural skills and stepping up support for immigrant organisations. This document was subsequently translated into specific measures to be adopted by the various ministries concerned. The outcome of this was an “implementation plan”, adopted by the Council of Ministers in 2014 and which will itself be supplemented by an “integration policy for foreigners in Poland, objectives and guidelines”, shortly to be submitted to the Council of Ministers.
71. As regards non-Polish Roma, the Advisory Committee noted that the situation of immigrant Roma remained a matter of concern and that, for example, the planned eviction by local authorities of 100 Roma of Romanian origin from an illegal settlement at Kamieńskiego Street in Wrocław was indicative of the lack of social integration strategies and discrimination<sup>25</sup>.
72. ECRI, which, in its fourth report, recommended that the authorities seize the opportunity of the programme for the Roma community to solve in a durable manner the question of illegal Roma settlements, took an interest in this specific case, which also prompted criticism from Amnesty International<sup>26</sup>, because, according to both the authorities and NGOs, it is representative of the difficulties encountered by Roma communities at national level. Various groups of Roma of Romanian origin settled on land belonging to the municipality of Wrocław as from the 1990s. These people no longer have Romanian identity documents, which makes it difficult to register their residence, on which entitlement to social benefits or to participation in support programmes depends. According to the authorities, these families do not always comply with the obligation to send their children to school and they have illegally constructed dangerous and insanitary “buildings”. According to NGOs, for some twenty years the authorities ignored the existence

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<sup>24</sup> Koryś 2005.

<sup>25</sup> ACFC 2014a: § 70.

<sup>26</sup> Amnesty International 2013

of this community and there was no social debate on the issue. However, ECRI understands that this Roma settlement was made up of successive groups and, therefore, it took some time for the authorities to structure their response, particularly since the legislation applicable changed with the accession of Romania and Poland to the European Union.

73. The first steps taken by the authorities were to visit the settlements in question with all the departments they could muster (police, border officials, health inspectorate, welfare centre etc.) and regularly check on all the furniture and other objects present in the dwellings of these Roma. The local and regional authorities subsequently developed a more substantial response. Numerous actions were taken, aimed at: informing Roma communities about their rights and obligations (especially as regards registering their residence and sending their children to school); taking, in co-operation with the Romanian authorities, measures to obtain the missing identity documents needed for registration; providing access to water, electricity and toilet facilities in these settlements and ensuring appropriate waste disposal services; conducting vaccination campaigns; providing shelters and canteens for these communities, particularly during the winter; and taking measures in schools close to the settlements concerned to facilitate schooling for children living there. The Wroclaw local authorities also offered long-term rehousing solutions, which, according to the information received by ECRI, were refused.
74. In addition to these measures, in whose implementation NGOs were involved, the Wroclaw local authorities also engaged in discussions with various stakeholders at national level (in particular the Human Rights Defender and relevant ministries). These discussions led to the conclusion that the problem of providing support and assistance to Roma cannot be resolved at local and regional level alone, but calls for responses at national level. The outcome of this, in July 2014, was a decision by the State Secretary in the Ministry of the Interior to set up a group of experts to make an in-depth study of the situation of Roma in Wroclaw and put forward proposals for a solution, under the oversight of the Ministry of the Interior.
75. ECRI recommends that the authorities (1) include provisions aimed at establishing a system for collecting data on equality both in the future integration policy for foreigners in Poland and in the accompanying implementation plan; and (2) extend this system to other integration policies in Poland, particularly as regards historical ethnic minorities.
76. ECRI also recommends that the authorities (1) include in the integration programme for the Roma community 2014-2020 a separate section on combating racism and racial discrimination; and (2) take steps to ensure that this programme is implemented in a balanced and effective way by all municipalities concerned.
77. ECRI additionally recommends that the authorities increase the length of the individual integration programmes for persons under international protection so as to be able to resolve the problems of language proficiency and acquisition of the basic skills needed to find employment.
78. ECRI further recommends that the authorities assess the idea of setting up a group of experts to study the situation of Roma communities in Wroclaw, its working methods and the results this group would achieve, in order to identify structural and systemic responses on a nationwide level which could be incorporated into the integration programme for the Roma community 2014-2020.

## **II. Themes specific to Poland**

### **1. 4th cycle recommendations subject to interim follow-up**

#### **- The adoption of comprehensive anti-discrimination legislation**

79. In its fourth report, ECRI recommended that the Polish government present comprehensive legislation against discrimination. In its interim conclusions adopted in March 2013, ECRI noted that this recommendation had only been partially implemented. A detailed analysis of the situation is given in the section on legislation.

#### **- Independent specialised authorities (GPRs Nos. 2 and 7)**

80. In its fourth report, ECRI recommended that the authorities ensure that an independent body was entrusted with all the powers which the specialised body for combating racism and racial discrimination should have under General Policy Recommendations Nos. 2 and 7. In its interim conclusions, ECRI noted that this recommendation had been partially implemented. Reference was made in this connection to the Defender's competence in respect of disputes between private entities and her Office's human and financial resources. The section of this report dealing with legislation contains a recommendation on the Defender's competences.

81. Where resources are concerned, ECRI notes that additional resources in the amount of 1 000 000 zloty were allocated in 2012. Furthermore, the difference between the draft budget drawn up by the Defender and the budget earmarked by Parliament has decreased steadily over the years (-4 525 000 zloty in 2012; -3 654 000 in 2013; and -2 738 000 in 2014). The Defender also confirmed that she had considerable room for manoeuvre in establishing priorities and allocating resources. She said, for example, that, in addition to the setting up of the anti-discrimination law division already noted in ECRI's interim conclusions, persons working in other departments were also enlisted to deal with cases under her new mandate for combating racism and racial discrimination. 19 members of her staff were involved in 2012; 34 in 2013; and 36 in 2014.

#### **- Racism at sports events and football matches**

82. In its fourth report, ECRI recommended that the authorities encourage the Polish Football Association to develop a code of conduct that would address, inter alia, the issue of fans' racism and that they step up their efforts to raise awareness about the dangers of racism in sport. In its interim conclusions adopted in March 2013, ECRI noted that this recommendation had been partially implemented. The code of conduct had not been developed. ECRI observes that this is still not the case.

83. The Polish authorities considered that measures other than the development of a code of conduct were more effective in eradicating racism and intolerance in sport, such as setting up a national information centre for sporting events and creating the functions of "fan co-ordinator", "safety director" and "match delegate".

84. ECRI notes that the legal framework applicable to sports events and football matches is based on paragraphs 2b and 2c of Article 39 of the Criminal Code, which make it possible for a court, when deciding on the sentence, to hand down additional criminal-law measures such as prohibiting a person from being present at certain places or attending mass events, while Article 41b offers clarification of this latter measure, which provides that a fan can be prohibited from participating in a mass sports event and can be required to be present at a given place throughout the duration of the sports event for purposes of supervision. These

criminal-law measures are supplemented by Article 5 of the Act on Safety at Mass Events, which allows a competent court to prohibit access to mass events, and Article 14 of the same Act, which allows match organisers to impose a stadium ban on anyone who infringes their regulations.

85. ECRI also points out that, in its fourth report, it recommended increased use of technology to apprehend those responsible for racially motivated offences in stadiums.
86. With regard to the use of technology, the Polish authorities said that, following its enactment in 2009, the legislation on safety at mass events had been amended in 2011. Article 11 now obliges match organisers to record events using audio and video surveillance equipment. Article 13 also obliges them to install electronic systems that can be used to identify individuals, control their access to different parts of the stadium and locate them in the stadium.
87. As regards the results achieved, ECRI notes that 6 cases of racist manifestations at football matches gave rise to preliminary proceedings leading to 1 indictment in 2010; 22 and 4 in 2011; 37 and 3 in 2012 and 33 and 5 in 2013. ECRI has been informed of a number of convictions. ECRI notes that, following manifestations of racism in stadiums, several clubs were fined (11 in the 2009/2010 season, 12 in 2010/2011 and 16 in 2011/2012), but that no administrative ban seems to have been imposed for reasons of racism.
88. In this context, ECRI finds it interesting that civil society has expressed doubts as to the real determination of the Polish authorities to address the criminal aspects of manifestations of racism and intolerance at sports events. ECRI also notes that the "Brown Book"<sup>27</sup> produced by the Never Again Association documents, with supporting photographic evidence, the recurrence of cases of antisemitism, anti-black racism and fascist or neo-Nazi propaganda, whether in the form of chants or banners displayed in the stands, as well as the regular and visible presence of extremist groups already mentioned in this report. ECRI considers that the awareness-raising activities already noted in its interim conclusions of March 2013 may have helped to alert a broad public to the dangers of racism in sport. But ECRI remains concerned about the contrast between the scale of the phenomenon and the small number of criminal convictions or administrative sanctions. ECRI considers, therefore, that the Polish authorities should take steps to enforce existing laws and regulations more effectively. ECRI also maintains its recommendation relating to the development of a code of conduct; the advantage of such a document is that, among other things, clubs would be involved in its development, its adoption and, hence, its implementation.
89. ECRI again recommends that the authorities encourage the Polish Football Association to develop, in association with football clubs, a code of conduct dealing, inter alia, with the question of racism among fans, in order to continue their efforts to raise awareness of the dangers of racism in sport. ECRI further recommends (1) that they take steps to ensure that match organisers' regulations contain clear provisions stating that racist and intolerant behaviour may give rise to administrative stadium bans, and see to it that these provisions are effectively enforced; (2) that they take steps to ensure that the Prosecutor General's guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes, described above in the sections on hate crime and violence, are applied more effectively in cases of racism at sports events; and (3) that, in particular, while complying fully with relevant laws and with fundamental rights, they take measures to disband extremist groups engaging in racist activity at

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<sup>27</sup> Kornak 2013.

football matches, for example by establishing co-operation with the Polish Football Association, football clubs and civil society in order to collect the evidence needed for this.

## **2. Policies to combat discrimination and intolerance towards LGBT persons**

### **- Data**

90. ECRI reiterates that Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity states that personal data on a person's sexual orientation or gender identity may be collected where this is necessary for specific, lawful and legitimate purposes. It is obvious that, without this information, it is impossible to lay the foundations for the formulation and implementation of policies for combating intolerance and discrimination towards LGBT persons. ECRI observes, however, that there are no official data on the LGBT population in Poland.

91. ECRI recommends that the authorities conduct surveys and collect data on LGBT persons in Poland and on the discrimination and intolerance of which they are victims.

92. The little information available comes from NGO surveys or academic studies, particularly at the instigation of the Government Plenipotentiary for Equal Treatment. Data from the Interior Ministry's Department of Control, Complaints and Petitions indicate only one incident of homo/transphobic violence in 2012 and three in 2013. As far as civil and administrative law is concerned, three cases were brought before the courts in 2012 under Article 13 of the Anti-Discrimination Act and, in each case, compensation was awarded. The report<sup>28</sup> published by the FRA in 2013 following its LGBT survey in the European Union shows that the situation of LGBT persons in Poland compares unfavourably with the European average in terms of: the feeling of having been discriminated against in the previous 12 months on grounds of sexual orientation (57% in Poland as compared with 47% Europe-wide), familiarity with the laws against discrimination (46% as compared with 56%), reporting incidents of discrimination (4% as compared with 10%), the feeling that homophobic language is very widespread among politicians (83% as compared with 44%), the feeling that homophobic jokes are very widespread in daily life (47% as compared with 37%), avoiding holding hands in public due to fear of homophobic reprisals (83% as compared with 66%), and avoiding certain locations due to fear of homophobic reprisals (61% as compared with 50%).

### **- Legislative issues**

93. Where criminal law is concerned, ECRI refers to the analysis and recommendations contained in §§ 27-28 and 46-47. As regards civil and administrative law, ECRI notes that the Anti-Discrimination Act mentions sexual orientation among the grounds of discrimination, albeit solely for the purposes of protection in the employment field, but makes no mention at all of gender identity. Poland has no specific legislation regulating changes of gender. Anyone wishing to change their gender or name can do so by bringing an action under Article 189 of the Code of Civil Procedure. An action can be brought against the parents on the grounds that they wrongly indicated the child's gender at the time of birth. Neither does Poland have any legal provisions allowing persons of the same sex to marry or register a civil partnership. The current legal provisions are applied in such a way that it is not possible to issue administrative documents to persons of

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<sup>28</sup> FRA 2013c.

the same sex wishing to marry or form a civil partnership in another country: to obtain the civil status document which is necessary for this purpose, applicants are required to complete a form stating the identity of the person they plan to marry or with whom they plan to enter into a partnership. Since marriage is defined in Article 18 of the Polish Constitution as the union of a man and woman, the registration officer will refuse to issue the document requested if it appears from the application that it will be used to form a union with a person of the same sex.

94. ECRI also notes that proposals for amendments to the Anti-Discrimination Act were introduced in June 2013 with the aim of including gender identity among the prohibited grounds and extending protection on grounds of sexual preference or gender identity to all areas of life. Regarding the possibility of persons of the same sex marrying or entering into a partnership in another country, the Polish authorities said that they intended to introduce draft legislation on civil status documents. The draft provided for the issuance of a neutral, universal certificate based on the information contained in the central registry instead of having numerous civil status documents relating to the same person, thus enabling Polish citizens to sort out any administrative situation. Despite the assurances of the Government to ECRI, the amended Civil Status Act which was enacted does not regulate the possibility for issuance of a certificate for Polish citizens intending to conclude same-sex marriages in other countries. On the contrary, the law now more rigorously excludes the possibility of issuing this type of certificate.<sup>29</sup> Lastly, ECRI understands that a public consultation was held in April 2014 on draft legislation designed to facilitate sex and name change procedures, with a view to submitting it for parliamentary procedure, and that the legislation was drafted in close co-operation with civil society players representing transgender persons, the Ministry of Health and the Government Plenipotentiary for Equal Treatment.
95. Lastly, ECRI notes that Poland explicitly recognised in its domestic legislation on asylum and refugees that sexual orientation is included in the concept of “membership of a certain social group”<sup>30</sup>. On this basis, therefore, international protection can be afforded to asylum-seekers fleeing persecution to which they are subjected on grounds of sexual orientation.

- **Discrimination in various fields**

96. In the field of education, the Government Plenipotentiary for Equal Treatment mandated the Jagiellonian University to conduct research and produce reports on discrimination, inter alia against LGBT persons, as part of the project “Equal treatment as a standard of good governance” The research findings were used in the diagnosis undertaken prior to drawing up the National Action Plan for Equal Treatment 2013-2016. Reference may be made to the publication of a leaflet entitled “Lessons in equality: teaching materials. Talking about sexual orientation and supporting young people at school” and a campaign in support of parents of non-heterosexual children entitled “Parents, dare to speak up!”, both of these being initiatives organised by the Campaign against Homophobia. ECRI takes note of these initiatives but wonders whether they can produce results as long as the Anti-Discrimination Act does not afford protection against discrimination in education on grounds of sexual orientation or gender identity. According to surveys conducted by a collective of Polish LGBT associations,<sup>31</sup> over 60% of pupils say that the subjects of sexual orientation and homophobia are not dealt

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<sup>29</sup> Decision RNs 661/ 14 of the district court of Warsaw-Srodmiescie of 17 March 2015. See E. Siedlecka : Trafik urząd na geja, Gazeta Wyborcza, 18 March 2015.

<sup>30</sup> CommDH 2011.

<sup>31</sup> Polish Society of Antidiscrimination Law (et al) 2014.

with in the classroom. These surveys also show that 23.5% of homophobic abuse cases occur at school and that teachers are responsible in 3.5% of cases. The situation with regard to violence is more serious, with 40% of cases occurring in schools.

97. In the field of housing, ECRI notes that, following the judgment delivered by the European Court of Human rights in the *Kozak v. Poland* case, application no. 13102/02, the legal provisions under which the applicant was denied the succession of tenancy following his partner's death have been amended. At its 1170<sup>th</sup> meeting on 7 May 2013, the Committee of Ministers declared that the Polish Government had complied with its obligations and closed the examination of the case. Furthermore, a Supreme Court judgment of 28 November 2012 (file no. III CZP 65/ 12) confirmed the case law to the effect that the cohabitation of same-sex and bisexual couples constitutes an adequate legal basis for succession of tenancy.
98. In the field of healthcare, the above-mentioned survey by the FRA shows that 13% of lesbians, 10% of gays, 9% of bisexual women, 10% of bisexual men and 16% of transgender persons had felt discriminated against by healthcare personnel in the previous 12 months. The collective of Polish LGBT associations cites studies by the University of Poznan showing that more than 20% of students regard homosexuality as a disease. This collective also reports difficulties of access for transgender women to andrology services and for transgender men to gynaecology services. It also notes a lack of knowledge and lack of sensitivity on the part of health practitioners regarding LGBT issues. The Polish authorities have highlighted the fact that, under the Order of the President of the National Health Fund of 29 March 2013, there is now the possibility of obtaining reimbursement of services granted to a person whose gender is different from that indicated in his or her administrative file. With regard to the problem of discrimination against transgender persons by medical staff, the Polish authorities state that this problem has been recognised and will be the subject of action under the National Action Plan for Equal Treatment 2013-2016.
99. ECRI recommends 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.
100. For this purpose, 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.
101. Finally, ECRI recommends that the Polish authorities ensure that the curricula of all branches of school, university and vocational education contain a section on LGBT persons and the fight against discrimination towards them, and provide in-service training programmes to raise awareness among all relevant professionals (including health professionals).



## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The two specific recommendations for which ECRI requests priority implementation from the authorities of Poland are the following:

- ECRI recommends 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 recommends 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.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI recommends once again that Poland ratify Protocol No. 12 to the European Convention on Human Rights; to this end, the Polish authorities should bring their review of the conformity of national legislation to a speedy conclusion and lay before Parliament any amendments they consider necessary.
2. (§ 13) ECRI recommends (1) that language and citizenship be added to the prohibited grounds in Articles 118, 118a, 119, 256 and 257 of the Criminal Code; (2) that provisions be included in the Criminal Code establishing the following as offences (i) incitement to discrimination and public defamation on the prohibited grounds with the above additions; (ii) racial discrimination in the exercise of one's public office or occupation; (iii) public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity and war crimes, without any restriction as to the citizenship and ethnic origin of the victim and (iv) involvement in racist groupings as explained in § 10 above; (3) that the scope of Article 256, paragraph 1, of the Criminal Code be widened to prohibit any form of public expression, with a racist aim, of an ideology, whatever it may be, claiming the superiority of one group of people on the prohibited grounds with the above additions ; (4) that a provision be added to the Criminal Code stipulating expressly that racist motivation constitutes an aggravating circumstance of any ordinary offence; and (5) that Article 256 of the Criminal Code be revised to make it clear that the following are also offences: the dissemination, distribution, production or storage of racist material in connection with incitement to violence or discrimination, public insults and defamation, and threats on the prohibited grounds with the above additions.
3. (§ 21) ECRI recommends (1) that citizenship, language and religion be included among the prohibited grounds in all fields in which protection against discrimination is guaranteed by the Anti-Discrimination Act; (2) that segregation, discrimination by association and the announced intention to discriminate be added to the forms of discrimination enumerated in the Anti-Discrimination Act; (3) that the duty of public authorities to promote equality and prevent discrimination in carrying out their functions be added to the Anti-Discrimination Act; (4) that the law makes it obligatory for parties awarded contracts, loans, grants or other benefits by the public authorities to observe a policy of non-discrimination, extending this obligation to the promotion of such a policy and providing that the violation of this condition may result in the termination of the contract, grant or other benefit; (5) that provisions be introduced making it possible to amend or declare null and void any discriminatory provisions contained in internal regulations of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions; (6) that provisions be introduced into the Associations Act and/or the Political Parties Act making it possible to withdraw public funding from any organisation or political party which promotes racism; and (7) that the current proposals concerning the introduction of a comprehensive system of free legal aid for victims of discrimination wishing to take legal action and lacking adequate resources be carried through to completion.
4. (§ 26) ECRI recommends that the authorities amend the Anti-Discrimination Act in order to make it clear that the Human Rights Defender has jurisdiction to conduct investigations in response to complaints concerning cases of racial

discrimination between private individuals. An alternative solution would be to establish an independent equality authority dealing inter alia with racial discrimination, as recommended by ECRI in its GPRs No. 7 on national legislation to combat racism and racial discrimination and No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

5. (§ 28) ECRI recommends that sexual orientation and gender identity be explicitly added to the prohibited grounds in Articles 256 and 257 of the Criminal Code.
6. (§ 44) ECRI recommends that the Polish authorities (1) draw up and implement a comprehensive plan for training police officers and prosecutors in the application of the Prosecutor General's guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes; (2) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (3) incorporate into the statistical system indicators for monitoring the effectiveness of the judicial system in dealing with hate speech cases; and (4) mount a large-scale campaign for tolerance addressed to society at large, as already recommended in the 4th cycle report.
7. (§ 45) ECRI recommends 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.
8. (§ 47) ECRI recommends that sexual orientation and gender identity be added to the prohibited grounds in Articles 118, 119 and 255 of the Criminal Code.
9. (§ 61) ECRI recommends that the Polish authorities (1) rationalise the system for collecting data and producing statistics in order to provide a coherent, integrated view of cases of racial and homo/transphobic hate speech reported to the police or processed through the courts; (2) reinforce the group set up by the Council against Racial Discrimination, Xenophobia and Related Intolerance to study the real scale of the hate crime phenomenon; and (3) study, in consultation with civil society, the phenomenon of extremist violence occurring on the fringes of the Independence Day celebrations and draw up a comprehensive action plan for preventing and combating it.
10. (§ 75) ECRI recommends that the authorities (1) include provisions aimed at establishing a system for collecting data on equality both in the future integration policy for foreigners in Poland and in the accompanying implementation plan; and (2) extend this system to other integration policies in Poland, particularly as regards historical ethnic minorities.
11. (§ 76) ECRI also recommends that the authorities (1) include in the integration programme for the Roma community 2014-2020 a separate section on combating racism and racial discrimination; and (2) take steps to ensure that this programme is implemented in a balanced and effective way by all municipalities concerned.
12. (§ 77) ECRI additionally recommends that the authorities increase the length of the individual integration programmes for persons under international protection so as to be able to resolve the problems of language proficiency and acquisition of the basic skills needed to find employment.

13. (§ 78) ECRI further recommends that the authorities assess the idea of setting up a group of experts to study the situation of Roma communities in Wroclaw, its working methods and the results this group would achieve, in order to identify structural and systemic responses on a nationwide level which could be incorporated into the integration programme for the Roma community 2014-2020.
14. (§ 89) ECRI again recommends that the authorities encourage the Polish Football Association to develop, in association with football clubs, a code of conduct dealing, inter alia, with the question of racism among fans, in order to continue their efforts to raise awareness of the dangers of racism in sport. ECRI further recommends (1) that they take steps to ensure that match organisers' regulations contain clear provisions stating that racist and intolerant behaviour may give rise to administrative stadium bans, and see to it that these provisions are effectively enforced; (2) that they take steps to ensure that the Prosecutor General's guidelines on the participation of prosecutors in cases of crimes prosecuted upon private complaint and on the conduct by prosecutors of proceedings in cases of hate crimes, described above in the sections on hate crime and violence, are applied more effectively in cases of racism at sports events ; and (3) that, in particular, while complying fully with relevant laws and with fundamental rights, they take measures to disband extremist groups engaging in racist activity at football matches, for example by establishing co-operation with the Polish Football Association, football clubs and civil society in order to collect the evidence needed for this.
15. (§ 91) ECRI recommends that the authorities conduct surveys and collect data on LGBT persons in Poland and on the discrimination and intolerance of which they are victims.
16. (§ 99) ECRI recommends 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.
17. (§ 101) Finally, ECRI recommends that the Polish authorities ensure that the curricula of all branches of school, university and vocational education contain a section on LGBT persons and the fight against discrimination towards them, and provide in-service training programmes to raise awareness among all relevant professionals (including health professionals).



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