

APPENDIX: GOVERNMENT'S VIEWPOINT

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

ECRI, in accordance with its country-by-country procedure, engaged in confidential dialogue with the authorities of Poland on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, unless otherwise indicated, only takes into account developments up until 12 December 2014, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

Warsaw, 2 June 2015

**Viewpoints of the Polish authorities
regarding the fifth report on Poland
by the European Commission against Racism and Intolerance (ECRI)**

The Polish authorities value ECRI's contribution to the continuing process of applying measures the aim of which is to combat racism, discrimination and intolerance in Poland as well as the constructive dialogue with ECRI concerning the Commission's fifth report on Poland. The Polish authorities accord high priority to combating racism, discrimination and intolerance and are dedicated to fulfilling the Council of Europe's standards in this regard.

The Polish authorities also appreciate the fact that in its report ECRI has reported on numerous activities and initiatives undertaken by Poland in order to fight racism and intolerance and to ensure respect for equal dignity and fundamental rights of every human being.

The Polish authorities take this opportunity to pay tribute to the late Mr Marc Leyenberger, former Vice-President of ECRI, for his devotion and commitment to the cause of human rights. They also thank all other experts of ECRI and its Secretariat who participated in the drafting of this report.

At the same time the Polish authorities submit the following comments to ECRI's fifth report:

Re Summary - eight paragraph and paragraph 31 of the report

The Polish authorities confirm ECRI's findings that nationalist groups in Poland are few in number. At the same time they inform that in light of data available to the Internal Security Agency (ISA), the ISA did not observe any indications of the phenomenon of growing nationalism or racism in Poland in 2014. In the opinion of the Polish authorities, such assessment by ECRI is inaccurate as to facts and creates an exaggerated overtone of the report in this respect.

Re Summary - ninth paragraph

Based *inter alia* on new statistics available for 2014 the Polish authorities submit that the conviction rate for hate crimes **is growing**. The statement alleging a lack of commitment on the part of the Polish authorities to combat racism and intolerance is not based on fact.

First, the initiatives by the Prosecutor General, mentioned by ECRI, which were taken in 2013 and 2014, have already yield concrete results. For instance, in 2014, **154** indictments against **228 persons** and **25** motions for conditional discontinuation¹ of criminal proceedings in respect of **28 persons** were lodged with courts by prosecutors (compared to 28 indictments in

¹ Conditional discontinuation of criminal proceedings in light of the Polish Criminal Code constitutes a substantive reaction under the criminal law.

2009²). Those initiatives still have potential to bring further positive results if one bears in mind that due to objective factors (among them the duration of court proceedings) some of the effects of the Prosecutor General's measures need time to become visible.

Second, the number of persons found guilty by courts for hate crimes has also already increased significantly. This is confirmed by the statistical data collected by the Ministry of Justice specifically concerning hate crimes under Articles 119 § 1, 256 and 257 of the Criminal Code: in 2014, **140 persons** in total were convicted by final judgments by courts (compared to 58 persons in 2009)³.

The same positive trend is confirmed by the statistics collected by the Prosecutor General⁴. In 2014, **148 persons** were convicted by courts (and 1 co-accused was acquitted) in **108 cases** in which prosecutors brought indictments and in 19 cases proceedings were conditionally discontinued in respect of 24 persons⁵. For the sake of comparison, 26 convicting judgments were handed down and 1 case was conditionally discontinued in 2009, according to statistics compiled by the Prosecutor General. Moreover, in 2014 courts acquitted the accused in only 6 cases (10 persons) and in only two cases proceedings were discontinued on formal grounds.

Third, the Polish authorities consider that criminal prosecution and conviction, while important and necessary, is not the only way to measure their commitment and actually it is not the only way of responding effectively to the problem of racism and intolerance. Educational and awareness-raising activities are equally important. The number of projects run by Polish authorities with this aim in mind significantly increased during the reporting period, which is clear evidence of genuine commitment on the part of the Government. These activities - many of which are carried out in cooperation with the civil society - are addressed to the relevant authorities (prosecutors, the Police, the Border Guard, staff of reception centres for refugees, etc.), teachers, media, foreigners and to the public at large. For instance, since 2009 intensive training on counteracting and combating hate crimes has been conducted in the Polish Police within the framework of *the Law enforcement officers programme on combating hate crimes* (LEOP). Over 77,000 policemen have taken part in such training. On the other hand, actions aimed at encouraging victims to report hate crimes to law enforcement authorities have been undertaken, for instance within the framework of the country-wide information campaign called *Racism. Say it to fight it*, carried out in 2014.

Fourth, for many years both the authorities and sports clubs as well as sports associations have been engaged in the fight against all forms of racism in sport. To this end, procedures for reacting to racist incidents at sports events have been introduced. A system of penalties applied to racist conduct of sports clubs, sportsmen, referees, trainers or fans has been implemented. Many educational and awareness-raising projects are carried out to oppose all forms of racism and intolerance in sport. Without diminishing the importance of some racist

² One should note that this figure concerns the number of cases brought before courts in 2009, yet the number of the accused could be slightly higher bearing in mind that proceedings could have been conducted against several persons.

³ The statistics of the Ministry of Justice for 2014 are preliminary at this stage.

⁴ The statistics of the Prosecutor General encompass all cases in which a racist motivation was the subject of proceedings, hence may also include other crimes than those qualified under Articles 118, 118a, 119, 126a, 256 or 257 of the Criminal Code.

⁵ The above data for 2014 concern both final and non-final judgments handed down in court proceedings conducted on the basis of indictments or motions for conditional discontinuation lodged by prosecutors. One cannot exclude that some other proceedings were also conducted on the basis of private indictments.

incidents that have occurred at some sports events, such cases remain isolated and the Polish authorities cannot share the opinion that there is a general problem of racism in sport. Against this background the statements of ECRI are not supported by any statistical data.

In the light thereof, the statement about the alleged lack of commitment on the part of the Polish authorities contradicts facts and is **entirely without grounds**.

Re Summary - tenth paragraph

The Polish authorities submit that the Criminal Code prohibits any incitement to any crime irrespectively who the victim is. All persons, including LGBT persons, are equally protected under the general provisions of the Criminal Code criminalising, for instance, such types of conduct as violence, public insults, defamation or making unlawful threats, and incitement to such crimes, including if they are motivated by hatred or discrimination.

Re paragraph 4 of the report

The Polish authorities clarify that all provisions that were mentioned in paragraph 4 of the report, *i.e.* Articles 118, 118a, 119, 256 and 257 of the Criminal Code, refer to “nationality” grounds. Depending on the type of the criminalised conduct, the Code makes references to “national groups”, “national reasons”, “national differences” or “national affiliation” formulated in the same way and form as references to ethnic origin. It is, therefore, not correct to state that only some of these articles refer to “nationality”.

Ad paragraph 6 of the report

Article 212 of the Criminal Code penalises defamation of both individuals and groups. This provision establishes a general category of crime affording protection against defamation regardless of the grounds on which an unlawful act was committed and so it covers also the instances mentioned in General Policy Recommendation (GPR) no. 7.

Re paragraph 13 of the report and recommendation no. 2

(1) In the Polish authorities’ assessment, the Criminal Code provisions referred to in the recommendation criminalise, albeit not expressly, acts motivated by hatred that are committed on the grounds of language or citizenship. In the current wording of the criminal law, the notion of language is included in the premises of “ethnic origin” and “nationality” - the latter one also covers the notion of citizenship. Such interpretation is consistent with Polish judicial practice.

(2) Public insulting of a population group, as well as individuals, on grounds of their national affiliation (hence also their citizenship) as well as ethnic, racial (hence also skin colour) or religious affiliation (or lack of denomination) are already penalised under Polish law (Article 257 of the Criminal Code). The general provision of Article 255 of the Criminal Code, which criminalises incitement to any crime, also refers to an act involving incitement to public defamation (see also point 3).

Any form of racial discrimination in relations between a public authority and a citizen (*racial discrimination in the exercise of one’s public office or occupation*) is contrary to Article 32 of

the Constitution of the Republic of Poland, which provides for the equality of citizens (prohibition of discrimination on any grounds). Every person may invoke a violation of this principle by lodging a constitutional complaint.

With respect to the criminalisation of denial, trivialisation or justification of the crimes of genocide, war crimes and crimes against humanity, it should be recalled that limitation on citizenship grounds only applies to acts referred to in Article 55 of the Act on the Institute of National Remembrance (*ustawa o Instytucie Pamięci Narodowej*). In the remaining scope, pursuant to the provisions of Article 6(2)(a) of the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems, Poland submitted a reservation - to protect freedom of speech properly - that in order to consider the indicated behaviour as criminal it is necessary to demonstrate that its intent was, as provided for in Article 6(2)(a), to incite hatred, discrimination or acts of violence against individuals or a groups.

Turning to the issue of criminalisation of participation in a racist group, it should be noted that Poland bans political parties and other organisations (associations, clubs, etc.) whose activity or programme permits racial or national hatred, among others (Article 13 of the Constitution). At the same time, Article 258 of the Criminal Code criminalises participation in any organised group or association the purpose of which is to commit an offence, including offences motivated by grounds whose nature is discriminatory. The motivation of members of such group (e.g. racist) is an incriminating circumstance that affects the sentence, but the lack of a possibility to determine such motivation does not lead to offenders' impunity.

(3) Public incitement to any crime, including prohibited acts of racist nature, is punishable under Article 255 of the Criminal Code. Realising the need to accord special treatment to hate crimes, the Polish lawmaker has imposed stricter liability for inciting to them. Pursuant to Article 126a of the Criminal Code, public incitement or public praising of the crime of extermination of a national, ethnic, racial, political, denominational group or a group professing a specific world view as well as the incitement or praising of the use of force or unlawful threat against a group of persons or a person on grounds of their national, ethnic, racial, political or denominational affiliation or because he or she declares no denomination (Article 118, Article 119 of the Criminal Code) is more severely punished.

It should also be noted that the notion of "inciting to hatred" that operates in the Polish legal system is interpreted very widely by national courts. According to the definition adopted by the Supreme Court (judgment SN dated 5 February, 2007, ref. no. IV KK 406/06) incitement to hatred in the meaning of Article 256 of the Criminal Code involves statements that stir feelings of strong dislike, anger, lack of acceptance or hostility towards particular persons or entire social or religious groups.

(4) The Criminal Code has already obligated courts to take into account the motivation of the perpetrator of a prohibited act when handing down a sentence to such offender (Article 53(2) of the Criminal Code), which also applies to racist motivations. This solution is consistent with the pragmatics of Polish criminal law whose aim is to provide for general and abstract norms that can cover possibly the greatest number of factual situations. Article 53(2) of the Criminal Code also plays this role. Hence, the recommended addition *expressis verbis* of racist motivation as specific grounds seems to miss the point, because it would entail adding a broader, open, and thus never complete catalogue of possible motivations to this provision and so would lead to excessive casuistry.

(5) The Polish authorities take the position that a broad interpretation of the notion of “inciting to hatred” (see point 3), also understood as inciting to prohibited acts whose nature is discriminatory, includes dissemination, distribution, production or storage of racist material in the scope of Article 256 of the Criminal Code.

Re paragraph 16 of the report

The Polish authorities believe that an assessment of the level of protection against discrimination under Polish law should be done bearing in mind a whole range of available domestic remedies, and not only the ones included in the so-called Anti-Discrimination Act⁶. The right to equal treatment and the prohibition of discrimination have a constitutional basis and are protected by a mechanism of constitutional protection of rights and freedoms accorded to all individuals, namely a constitutional complaint. Civil-law remedies are also available to victims of discrimination. The relevant provisions of the Civil Code guarantee a wide protection of personal rights (Article 23) whose catalogue is defined and interpreted by courts in an open and non-exhaustive manner and is also applied to cases of discrimination. Under provisions of Article 24 in conjunction with Articles 415 and 448, the Civil Code also accords the possibility of redress to persons whose personal rights were violated or merely threatened.

Moreover, the Government Plenipotentiary for Equal Treatment is also explicitly tasked with a duty to promote equal treatment by operation of Article 21(2)(6) of the Anti-Discrimination Act.

Re paragraph 17 and 21 (4) of the report and recommendation no. 3 (4)

With regard to paragraphs 17 and 21 (4) of the report of ECRI, one should note that the findings and conclusions contained in the report are based on erroneous factual and legal findings. Since the recommendations have been based on false assumptions, ECRI recommends introducing to the Public Procurement Act (*ustawa - Prawo zamówień publicznych*) legal provisions that either do not apply to the scope regulated by the Public Procurement Act or which are already part of the Public Procurement Act and which sufficiently regulate the issue of equal treatment and non-discrimination. The Public Procurement Act does not regulate the procedure of granting funds to co-finance projects - either in the form of grants, loans or as co-financing from EU funds. The principle determined in Article 3(3) applies to entities that are not obligated to apply procedures resulting from the Public Procurement Act, but nevertheless benefit from funds granted by public institutions. The aim of this provision is to obligate such entities to apply at least the basic principles of non-discrimination, transparency and equal treatment when expending funds. Moreover, Article 3(3) of the Public Procurement Act does not refer to public-private partnerships.

Moreover, the Polish authorities clarify that the entities in question are under an obligation to respect the prohibition of discrimination or racism - not only under the Labour Code but also prohibitions specified in many other provisions of Polish law, including the Anti-Discrimination Act and the criminal law. It should be noted that Article 9(1) of the Act on the Liability of Collective Entities for Prohibited Acts subject to a Penalty (*ustawa o odpowiedzialności*

⁶ Act of 3 December 2010 on the Implementation of Certain Provisions of the European Union on Equal Treatment (*ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania*) (Dz. U. of 2010, no. 254, item 1700, as amended).

podmiotów zbiorowych za czyny zabronione pod groźbą kary) dated 28 October 2002, explicitly provides for criminal liability of collective entities with respect to hate crimes specified in Articles 119 and 256-257 of the Criminal Code. Pursuant to this Act, a court may prohibit such entity to use grants, subsidies and other forms of support from public funding or prohibit it to bid for a public procurement contract.

Re paragraph 21 of the report and recommendation no. 3

Article 21(2)(6) of the Anti-Discrimination Act explicitly tasks the Government Plenipotentiary for Equal Treatment with a duty to promote equal treatment.

Recommendation included in paragraph 21(6) and recommendation no. 3(6) to the extent that provisions be introduced into the Political Parties Act (*ustawa o partiach politycznych*) making it possible to withdraw public funding from any political party which promotes racism, overlook the fact that Article 13 of the Constitution of the Republic of Poland already prohibits the existence of such political parties that promote racism. Promotion of racism by a political party prompts the Constitutional Court to rule on the unconstitutionality of such party's political objectives, and as a consequence, deprives such political party of the possibility to exercise rights arising under statutes, in particular the right to stand in elections and the possibility to receive funds from the State budget.

Re paragraph 25 of the report

It is the position of the Polish authorities that the legal system currently in force in Poland, which should be assessed as a whole, affords full protection to individuals against discrimination in horizontal relations. This system encompasses both powers vested in the Human Rights Defender, as mentioned by ECRI, and judicial remedies provided for under civil, administrative and criminal law.

The Polish authorities recall the very strong mandate of the Human Rights Defender under Polish law, which enables him/her to effectively act in defence of rights of individuals. As regards the specific issue of disputes between private individuals concerning cases of discrimination, the scope of the mandate of the Human Rights Defender has already been examined by the European Commission upon a complaint lodged by the Polish Society of Anti-Discrimination Law (*Polskie Towarzystwo Prawa Antydyskryminacyjnego*) (case ref. no. EU-Pilot 3276/12/JUST). Ultimately, the European Commission considered the competences of the Polish Ombudsperson in horizontal cases to be compatible with Directives nos. 2000/43/WE, 2004/113/WE and 2006/54/WE, and the case was closed as a result.

Furthermore, Polish law contains many tools at the disposal of individuals by means of which they can seek effective protection of their rights in the case of discrimination (civil-law remedies, e.g. protection of personal rights, remedies under the Anti-Discrimination Act and Labour Code, criminal measures, including the possibility to file private indictments).

Re paragraph 26 of the report and recommendation no. 4

The wording and scope of the recommendation included in paragraph 26 of the report are unclear. The text does not specify, in particular, what types of acts would be the subject of

investigations conducted by the Defender (or by some other new body), i.e. whether they would be criminal acts or other discriminatory behaviour or both.

In criminal cases, the public prosecution service (which enjoys an independent status in Poland) has powers to conduct investigations into complaints of racial discrimination amounting to crimes. Measures have been taken to improve the ability of the prosecution service to effectively discharge this function (such as the appointment of specially-tasked district prosecutor's offices and prosecutors). In addition, on 29 October 2012, the Prosecutor General issued *Guidelines on the Participation of Prosecutors in cases of crimes prosecuted upon private indictment*, in which he encourages prosecutors to examine the possibility of instituting proceedings on their own motion after victims of e.g. hate speech in the Internet file a private indictment.

The possibility of resolving conflicts between private parties in cases concerning racial discrimination - and seeking redress for such occurrences - is already available through civil-law dispute as evidenced by many examples of jurisprudence.

Referring to the proposal concerning a new extrajudicial inquiry mechanism, it should also be recalled that Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms in any case requires access to court in the determination of civil rights and obligations or of the grounds of criminal charges. The proposals to establish additional independent authorities dealing with matters already falling under the jurisdiction of courts should be assessed with caution bearing in mind that under Article 10 of the Polish Constitution judicial power is vested in courts and tribunals.

Re paragraphs 28 and 47 of the report

The Ministry of Justice has agreed with postulates to initiate legislation for the purpose of introducing to the Criminal Code an explicit prohibition of acts of discriminatory nature on grounds of sexual orientation, gender identity and disability. Legislative work is to be conducted in the framework of Deputies' bills dealing with this subject that are already in Parliament.

Re paragraphs 32 and 52 of the report

The estimates concerning the number of the so-called ultra-nationalists during Independence Day celebrations in Warsaw are not correct. It would not be correct to qualify all participants of the manifestations organised by the right-wing parties as "ultranationalists". The figures of 10,000 or 20,000 are greatly exaggerated. Offences against public order were committed by a small number of participants of these manifestations, in particular hooligans, who can hardly be described as advocates of any specific political ideology. Those who committed unlawful acts were brought to justice. Furthermore it should be noted that commemorations in 2014 were much calmer and reported much fewer incidents than in the previous years.

Regarding the performance of the play „*Golgotha Picnic*”, it should be stressed that the protests were not aimed at any concrete social group, such as a religious or ethnic group, but were conducted by persons who thought that the play could insult their religious feelings. Therefore it is not correct to refer to these events as examples of extremism or racism in Poland.

Re paragraph 35 of the report

Article 212 and Article 216 of the Criminal Code provide protection against defamation and insult to every individual, including if they assume the form of hate speech directed at LGBT persons. Moreover, the Criminal Code prohibits incitement to any crime, thus also to crimes to be committed to the detriment of LGBT persons.

Re paragraph 37 of the report

It is not correct to measure the percentage of convictions (conviction rate) by reference to Police statistics. One should remember that the legal qualification of crime can change in the course of criminal proceedings. Furthermore, the data received and registered by the Police is just preliminary (even data on whether an act in question was actually committed) and, as such, needs to be confirmed at subsequent stages of the procedure. One should also remember that a sentence (or an indictment) could concern many offences or perpetrators (since proceedings can be combined).

As evidenced by the statistical data quoted by ECRI in paragraph 37 of the report, the number of convictions by final judgments under Article 256 of the Criminal Code actually increased in 2012 compared to 2009 and to 2010, in particular. Moreover, according to newly available Ministry of Justice statistics, the number of persons convicted under Article 256 of the Criminal Code went up to **35** in 2014 (as compared to 17 in 2009). In addition, the number of convictions under Article 257 of the Criminal Code criminalising public insult on racist grounds (which is also relevant from the point of view of the fight against hate speech) also increased, e.g. in 2014 there were **49** convicted persons, as compared to 22 persons in 2009.

One should also take into account the duration of proceedings - the courts' final response to the increasing number of proceedings conducted by prosecutors (or the Police) in 2012 (and in the subsequent years) inevitably requires some time and could not have been reflected in the statistics indicated by ECRI up to 2012. In this context, one should stress that in 2014 prosecutors brought indictments in **38** cases under Article 256(1), in **5** cases under Article 256(2) and in **101** cases under Article 257 of the Criminal Code. In addition, motions for conditional discontinuation of criminal proceedings under Article 256 of the Criminal Code were brought in 7 cases and under Article 257 of the Criminal Code in 12 cases.

Re paragraph 44 (2) and (3) of the report and recommendation no. 6 (2) and (3)

From 1 July 2015, courts will be obligated to provide information about the offender's motivation when submitting statistical data concerning the number of final convictions in hate crime cases. Such data are collected by means of special e-forms.

The Ministry of Justice is working to introduce a new IT system covering all domestic courts. It will permit, *inter alia*, a more efficient gathering of statistical data, including a fuller analysis of proceedings dealing with hate crimes.

Re paragraph 56 of the report

Consultant prosecutors were appointed in “**appellate prosecutor's offices**” and not in “**appeal courts**”. The judiciary and prosecution are independent of each other in Poland.

Disciplinary proceedings in respect of the prosecutor who had investigated the painting of swastikas resulted in his acquittal by decision of the Disciplinary Court of 19 May 2014 and, contrary to what the ECRI stated, no further investigation was carried out to ascertain the reasons of this decision.

Re paragraph 62 of the report

The Polish authorities confirm that the assessment expressed in the second sentence of paragraph 62 of the report that "the policy towards historical minorities concentrates mainly on maintaining their identity" is fully justified and consistent with the will of the national and ethnic minorities.

Re paragraph 66 of the report

The 2004-2013 Programme for the Roma Community in Poland yielded visible results in the field of education. The number of pupils complying with compulsory education has increased and the attendance of children in schools at the elementary level has improved. Roma children are included in a wide range of additional activities whose purpose is to equalise their opportunities in education, both in formal education (e.g. by employing Roma education assistants and assistant teachers, and through a system of remedial classes, etc.) and in informal education (by the activity of more than 50 additional integration after-school clubs which Roma children attend. These clubs offer Roma children assistance in doing their homework, and organise remedial classes, computer classes, visits to cultural institutions, holidays, trips, meals and various general development games). Education is also one of the priorities of the 2014-2020 Programme for the Integration of the Roma Community in Poland.

Participation of Roma children in the special education is a separate issue. The following factors should be listed as some of the underlying causes of this situation:

- problems related to diagnosing Roma pupils in a manner that would take into consideration their bilingualism and biculturalism and often also their lack of command of the Polish language,
- attractive environment of special schools - the equipment of such schools and the high level of preparation of teachers to work with pupils with special educational needs make parents more willing to send their children to this type of schools, especially, if they themselves or older siblings of the child studied there,
- inadequate knowledge among Roma parents about the procedure of placing Roma pupils in special schools and the lack of awareness of parents of the possibility to transfer the child from a special school to a public school at every level of education,
- some families combine the chance for a child to attend a special school with the possibility of taking advantage of additional social benefits.

It should be emphasised that in practice the problem of visible over-representation concerns three voivodeships, where the general number of Roma people is the highest. In other voivodeships, a decrease in the number of Roma pupils placed in special schools is being observed, and in some voivodeships they do not attend such schools at all.

Under the Polish legal system, **only parents** whose children obtained a ruling indicating the need for special education, have the right to place children in special schools. One should

also note that the pedagogical and psychological counselling centres take all actions upon the request of parents (or other legal representatives of the child) and with their consent or that of pupils who are of age. Parents are authorised to participate in the meeting of the panel issuing a ruling and should be informed of its date. If there is a need for an interpreter, a Roma education assistant can also participate upon the agreement of parents (or other legal representatives) of the child. A ruling is served only on parents (or other legal representatives) of the child and they can appeal within 14 days from the date of its service. It is also solely up to a parent (legal representative) to present the ruling to the school or not.

Special education is organised in other forms of pre-school upbringing, pre-schools and generally accessible schools, integration pre-schools and schools, integration sections organised in pre-schools and generally accessible schools, special pre-schools and schools as well as centres. Parents take sovereign decision to which school the child will attend and can change this decision whenever they consider it appropriate. The primary school or the college in the area of residence of the child cannot refuse to admit the child.

In 2015, the Ministry of Administration and Digitalisation is planning to take further measures to limit the practice of placing children in special schools, primarily in three voivodeships where the largest populations of Roma pupils attend special schools. In 2012-2013, the Ministry of Administration and Digitalisation and the Ministry of National Education in cooperation with voivodes and educational inspectors carried out a number of activities to inform about the different forms of support available to Roma children and young people through the system of education. The Ministry of National Education in cooperation with the Centre for Education Development carried out activities addressed to the staff of pedagogical and psychological counselling centres - members of adjudicating panels (bodies issuing rulings) to raise their awareness about the need to apply diagnostic methods that would be adequate to the communication skills of multilingual and culturally different children, including Roma children.

Re paragraph 67 and 76(1) of the report and recommendation no. 11(1)

1. Data registered by the Human Rights Protection Team of the Ministry of the Interior does not confirm the existence of cases of racial profiling of Roma community members by the Police. Likewise, the analysis of information coming from the monitoring of hate incidents directed against members of the Roma community shows that the Police reacts to all reports concerning such incidents coming from the Roma community. There is also no information to corroborate the charges of improper or discriminating attitudes or treatment of Roma people on the part of Police officers or other authorities. For instance, relations between the Police and Roma communities have been characterised by cooperation and dialogue in recent years. No such concrete cases of either racial profiling or discriminatory treatment by the law enforcement officials were ever brought to the attention of the Polish authorities by ECRI and thus they are not in a position to check these allegations. In any case, the policy of the Polish authorities is to oppose and combat any forms of discrimination on the part of public officials.

2. As regards the alleged problem of discrimination, one should note, for instance, that the main reasons why the Roma are excluded from the labour market - apart from the low level of education (including sometimes illiteracy and inadequate knowledge of Polish) are:

- insufficient qualifications and work experience,
- failure to actively seek employment,

- insufficient skills to operate on the labour market and take advantage of the available labour market instruments,
- dependence of subsequent generations of Roma on passive forms of support (financial benefits and non-cash support),
- a model of the family making it difficult for women to obtain education and enter the labour market,
- unwillingness to take up professions of low social prestige and low earnings,
- unwillingness of Roma persons to take up certain forms of employment resulting from cultural differences and the unfamiliarity with these principles among the majority,
- unwillingness of employers to employ Roma persons,
- the general domestic labour market situation.

In the opinion of Polish authorities, one should not equate such complex social issues as described above solely with discrimination. It also seems that actions, which have been undertaken by the Polish authorities since 2001, have resulted in a significant improvement of the way in which Roma people are perceived, as evidenced by reports published by public opinion centres.

Despite the arguments presented in paragraphs 67 and 76(1) of the ECRI report about the growing level of discrimination against the Roma community and the need to introduce a separate section to deal with this issue in the Programme for the Integration of the Roma Community in Poland in 2014-2020, it should be emphasised that the 2004-2013 Programme already included such anti-discrimination component under the name: "*Safety, countering crimes committed on ethnic grounds*". However, even if projects could have been proposed, this area was not popular among the beneficiaries themselves and the projects implemented within this field constituted no more than 0.2% of all actions implemented under the above-mentioned Programme.

Finally, one should point out that the 2014-2020 Programme indicates as the main priority increasing the social integration of Roma in Poland by means of actions in the fields of education (including cultural, historical and civic education), vocational activation, health protection and improving their housing situation. The Programme emphasises that its purpose is not to ensure *ad hoc* assistance in the difficult situation in which the Roma community has found itself, but to develop mechanisms that would make it possible to achieve the stated objectives.

Re paragraph 72 of the report

Polish authorities also took many steps to encourage the inhabitants of the illegal Roma settlements in Wrocław to register their stay, and in cooperation with the Romanian authorities, to facilitate the process of completing missing documents.

The argument that for some twenty years the authorities ignored the existence of this Roma community is ill-founded. According to the data of the Wrocław authorities, there is no link between the first illegal settlement in Wrocław, which existed in 1996-1999 (about ten temporary flats inhabited by 100 persons) and the current illegal settlements, which began to be reported in 2008. In autumn 1999, deportation of the Roma to Romania was organised pursuant to the then applicable law (at the time neither Poland nor Romania were members of the European Union. Therefore, the legal regulations applicable to the stay of foreigners in Poland were different then).

Re paragraph 75(2) of the report and recommendation no. 10(2)

The situation of national and ethnic minorities as regards equal treatment is already studied. First, data concerning this subject are collected in the course of national population and housing censuses. Secondly, such data are also gathered on the occasion of compiling, every two years, of reports on the situation of national and ethnic minorities and regional language in the Republic of Poland. The obligation to prepare the above-mentioned reports arises under Article 31(3) of the Act on National and Ethnic Minorities and Regional Language (*ustawa o mniejszościach narodowych i etnicznych oraz o języku regionalnym*). The communities referred to here, have been living together with Poles for centuries and are generally well integrated, while at the same time having succeeded in preserving their cultural autonomy and their separate identity.

Re paragraph 81 of the report

In 2014, the difference in the budget of the Human Rights Defender amounted to 2.378.000 zlotys, instead of 2.738.000 zlotys indicated in the report.

Re paragraph 88 of the report

The doubts expressed by the civil society as to the real determination of the Polish authorities to address the criminal aspects of manifestations of racism and intolerance at sports events have not been supported by any concrete data or statistics. As the Polish authorities have already mentioned, many measures have been introduced, including procedures and penalties applicable to cases of racism at sports events. Audio-visual monitoring is used. Prosecutors have conducted an increasing number of proceedings, many of which have resulted in convictions for offenders. The Ministry of Sport and Tourism closely monitors the situation at sports events and runs a project *Supporters United (Kibice Razem)* whose aim is to change the style and forms of expressing support by football fans, not only at stadiums, but also in public space outside stadiums, and to eliminate racist or xenophobic attitudes among football fans.

Re paragraphs 93 i 94 of the report

It should be stressed that the Government of Poland never declared its intention to introduce a certificate of legal capacity to marry abroad that would enable to enter into a civil partnership or marriage abroad with persons of the same sex. The Constitution of the Republic of Poland defines marriage as a monogamous union between a man and a woman. Moreover, the Family and Guardianship Code specifies conditions that have to be met by prospective spouses, such as being of appropriate age, not being legally incapacitated or lacking consanguinity. The purpose of a certificate of legal capacity to marry abroad is to affirm that pursuant to Polish law a person can enter into marriage with another person indicated in the certificate. Hence, such certificate confirms that there are no obstacles to marry under domestic law. Such obstacles can be unilateral (*i.e.* inappropriate age, complete legal incapacitation, psychological illness or mental retardation, another marital relationship) and bilateral (*i.e.* consanguinity and affinity, existence of an adoption relationship or the lack of a sex difference between prospective spouses). Such certificate is envisaged both under international law, *i.e.* *Convention no. 20 of the International Commission on Civil Status*, signed at Munich on 5 September 1980, which has been ratified by Germany, Austria, Spain, Greece, Italy, Luxembourg, The Netherlands, Portugal, Switzerland, Turkey and Moldova, and

in the domestic law of *inter alia* Bulgaria, Spain, The Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Portugal, Romania and Sweden.

At the same time Poland communicated that the new regulations envisaged a universal certificate confirming the civil status of a person, understood as his/her situation in relation to marriage (*i.e.* single, divorced, widow, widower, married) that can be used for any given purpose. These regulations entered into force on 1 March 2015.

Re paragraph 98 of the report

The Polish authorities stress that Article 68 of the Constitution of the Republic of Poland provides that everyone shall be entitled to healthcare. At the same time, public authorities ensure that all citizens, regardless of their socio-economic status, place of residence, sex or religion, shall have equal access to healthcare services financed out of public funds. The scope and conditions relating to the provision of such healthcare services as well as the terms and manner of financing of healthcare services were laid down in the Act on Healthcare Services Financed out of Public Funds dated 27 August 2004 (*ustawa o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych*) (Dz. U. of 2008 no. 164, item 1027, as amended). The abovementioned Act does not introduce any additional limitations on access to healthcare services for LGBT persons.

Re Summary - paragraph no. 17, paragraphs 99-101 of the report and recommendations nos. 16-17

The Polish authorities stress that Polish law already protects the equality and dignity of LGBT persons and that Polish regulations are compatible with binding international standards.

Re paragraph 100(2) of the report

As indicated above, a certificate ascertaining that according to Polish law a person can get married abroad is compatible with generally applied regulations in Europe. At the same time one should remember that questions involving family law come within the exclusive remit of a given State which determines *inter alia* requirements that have to be met by a foreigner wishing to get married or to enter into a civil partnership on its territory. Some States require confirmation that under his/her national law, a given person can get married, other States only require a confirmation of civil status. In other States it may be necessary to conduct appropriate judicial proceedings. In light of the above, it is unjustified to burden the Polish law-maker with the responsibility of ensuring that all possible documents that may be required by the authorities of all countries in the world be available.

Re paragraph 101 of the report and recommendation no. 17

As regards ECRI recommendation no. 17 and the one in paragraph 101 to introduce to all school curricula (including higher and vocational schools) a section on LGBT persons and how to fight against discrimination of such persons and to provide in-service training programmes to raise awareness of all relevant professionals (including medical staff), the Polish authorities share the opinion that respect for the dignity of all persons and fighting discrimination remains a very important issue.

Therefore, the core curriculum of general education in all types of schools contains education objectives and contents addressing the issue of fighting all forms of discrimination, including discrimination on grounds of sexual orientation.

However, as regards sexual education, Poland has its own legal regulations that provide all pupils with the possibility to take part in classes covering this theme, while envisaging the right of parents of pupils who are not yet of age, and those pupils who are of age to resign from participating in such classes. In light of the above, the Polish side cannot commit itself to implementing the above recommendation with respect to all pupils.