

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

Adopted on 20 March 2013¹

¹ Any developments which occurred after 14.09.2012, date on which the response of the Polish authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.



ECRI Secretariat
Directorate General II - Democracy
Council of Europe
F-67075 STRASBOURG Cedex
Tel.: + 33 (0) 388 41 29 64
Fax: + 33 (0) 388 41 39 87
E-mail: ecri@coe.int

www.coe.int/ecri

FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

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

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

¹ CM/Del/Dec(2007)986/4.1.

1. *In its report on Poland (fourth monitoring cycle) published on 15 June 2010, 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. Responsibility for this legislative initiative should rest with a single Governmental entity, which should consult NGOs.*

The authorities of Poland have informed ECRI that the Act on the Implementation of certain provisions of the European Union on Equal Treatment (hereafter Anti-Discrimination Act – ADA) was enacted and entered into force on 1 January 2011.

The Act prohibits discrimination on 10 enumerated grounds (Art. 1 ADA) namely sex, race, ethnic origin, nationality, religion, denomination, beliefs, disability, age or sexual orientation and it excludes nine areas of life (Art. 5 ADA), whereas the Constitution in Article 32 § 2 contains no such restrictions: “No one shall be discriminated against in political, social or economic life for any reason whatsoever.”

ECRI notes with regret that the Act does not prohibit discrimination on grounds of language and citizenship. It also notes that in some areas of life the Act prohibits discrimination on four grounds, sex, race, ethnic origin or nationality, while in others it does so on three grounds, race, ethnic origin and nationality – effectively excluding religion (cf. GPR No. 7).

In general, ECRI welcomes the adoption of ADA but considers that the act needs to be improved. Inter alia, the act should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions (cf. GPR No. 7). ECRI, therefore, concludes that its recommendation has been partially implemented.

2. *In its report on Poland (fourth monitoring cycle) 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 discrimination¹ should have under General Policy Recommendations No. 2 and 7.*

The authorities of Poland have informed ECRI that Article 18 of ADA entrusts the Human Rights Defender and the Government Plenipotentiary for Equal Treatment with the task of “implementing the principle of equal treatment”. According to the information provided, the Government Plenipotentiary for Equal Treatments shall, inter alia, develop and evaluate draft acts, analyse and evaluate legal solutions and monitor the situation within the scope of application of the principle of equal treatment (Art. 21 of the ADA). However, as ECRI has already observed, the Government Plenipotentiary for Equal Treatments is not an independent body².

ECRI has also been informed that the Human Rights Defender processes complaints, conducts investigations, institutes and participates in court proceedings, undertakes studies, provides other public bodies with advice, proposes legislative initiatives, conducts campaigns and cooperates with NGOs (see § 24 of GPR 7). However, the Human Rights Defender is not competent for disputes between private entities, even in cases of racial discrimination.

According to the information provided, the Human Rights Defender has established an Antidiscrimination Law Division. Nevertheless, she has not been allocated any

¹ In accordance with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, racial discrimination is understood as meaning any difference of treatment based on grounds such as “race”, colour, language, religion, nationality or national or ethnic origin which has no objective and reasonable justification.

² § 36 of ECRI's 4th report on Poland.

additional financial support for her new tasks. ECRI has been informed that only four staff members provide assistance to victims of all forms of discrimination, in addition to performing all the other new tasks. Taking into account the Defender's duties, ECRI considers that her Office's human and financial resources are insufficient. The Human Rights Defender needs to invest more resources in combating racism and racial discrimination in order to be able to carry out all the tasks that should be assigned to an independent specialised body as per ECRI's GPR No. 2 and GPR No. 7.

ECRI therefore considers that its recommendation has been partially implemented.

3. In its report on Poland (fourth monitoring cycle) ECRI recommended that the authorities encourage the Polish Football Association to develop, together with the football clubs, a code of conduct that would address, inter alia, the issue of fans' racism. Moreover, the authorities should step up their efforts to raise awareness about the dangers of racism in sport.

The authorities of Poland have informed ECRI that work on a "code of conduct" which would apply to football stadiums has started and will be continued. The authorities have further informed that the Ministry of Sport and Tourism (MSiT) launched two national conferences in cooperation with the Government Plenipotentiary for Equal Treatment and the Ministry of Interior and Administration, and a promotional campaign in cooperation with Human Rights Defender. The authorities have stated that these activities led to the adoption of "No to Racism in Sport" declaration on 2 December 2010 by the directors of the majority of the sport associations including the Polish Football Association (PFA).

The authorities further informed that the MSiT has implemented preventive measures comprising workshops for coaches and trainers, in particular those working with children and youth on counteracting racism in sport. Other measures taken are the organisation of conferences, the distribution of a "How to Fight Racism" guidebook, the cooperation with the Never Again Association which implements "Let's Kick Racism out of the Stadium" campaign, the implementation of the UEFA EURO 2012 Social Responsibility Programme, aimed at building open attitudes, tolerance and cooperation, including the counteracting of racism and action in the framework of the Sport Events Security Council.

Moreover, the PFA has adopted a resolution prohibiting the exhibition of totalitarian, fascist, anarchist, racist symbols and any other material content inciting to intolerance or xenophobia. The PFA has published a booklet entitled "Security at Polish Football Stadiums" which consists in a list of graphic signs and symbols, together with their meaning, used by football hooligans.

ECRI welcomes the developments and the efforts of the authorities. However it expresses concern about the ongoing racist incidents at Polish sports events and reminds that the code of conduct has not been developed. ECRI draws attention to its GPR No. 12. Therefore, ECRI concludes that the recommendation has been partially implemented.

