



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

Distr.  
GENERAL

CERD/C/POL/19  
19 May 2008

Original: ENGLISH

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 9 OF THE CONVENTION**

**Nineteenth periodic reports of States parties due in 2006**

**POLAND\* \*\***

[19 February 2008]

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\* This document contains the seventeenth, eighteenth and nineteenth periodic reports of Poland, due on 8 June 2002, 2004 and 2006, submitted in one document. For the fifteenth and sixteenth periodic reports and the summary records of the meetings at which the Committee considered the report, see documents CERD/C/384/Add.6 and CERD/C/SR.1572, 1573 and 1581.

\*\* The annexes can be consulted in the files of the Secretariat.

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## Introduction

1. The aim of this report is to update information contained in the fifteenth and sixteenth periodic reports of Poland (CERD/C/384/Add.6) to the Committee and to present the legal situation and practice in the scope of implementation by the Republic of Poland of the provisions of the Convention in the period between January 2000 and July 2005, taking account of changes in Polish legislation in relation to the former report.

### **I. INFORMATION ON THE IMPLEMENTATION OF RECOMMENDATIONS OF THE COMMITTEE IN ITS CONCLUDING OBSERVATIONS (CERD/C/62/CO/6) THE FIFTEENTH AND SIXTEENTH PERIODIC REPORTS OF POLAND (CERD/C/BEL/CO/15)**

2. Regarding court decisions making reference to the Convention (see CERD/C/62/CO/6, para. 7), a direct reference to the Convention can be found in Constitutional Tribunal judgement of 31 January 2001 (ref. No. P.4/99). The case concerned a motion of the Commissioner for Civil Rights Protection of the Republic of Poland and juridical questions of district courts on the compliance of the provisions of both the Act of 23 April 1964, The Civil Code (*Journal of Laws* of 1964, No. 16, item 93, as amended; in particular as regards particular rules of inheriting farms) and the Regulation of the Council of Ministers of 12 December 1990 on the conditions of statutory inheritance of farms (*Journal of Laws* No. 89, item 519, as amended) with the Constitution of the Republic of Poland (*Journal of Laws* of 1997, No. 78, item 483, as amended) and Protocol 1 to the Convention on the Protection of Human Rights and Fundamental Freedoms. In the justification the Tribunal pointed out that “also acts of international law refer as a rule only to owning property (e.g., article 17 of the Universal Declaration of Human Rights refers to everyone having ‘the right to own property’) or property itself (art. 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms). However, one may also list international acts that refer separately to the right to inherit (e.g., article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966).”

3. Available data show that, in the reporting period, courts pronounced no further judgements that would refer directly to the provisions of the Convention.

4. Regarding the issue raised by the Committee (CERD/C/62/CO/6, para. 8) of activities taken towards a legal prohibition of the existence of organizations and activities, including media activities, which promote and incite racial discrimination, this is discussed in paragraphs 95-98 below.

5. Regarding incitement to racial hatred (*ibid.*, para. 9), the issue of actions taken with the aim of appropriate conduct of proceedings in cases concerning inciting racial discrimination is discussed in paragraphs 129-131 below.

6. Regarding reports of racially motivated harassment and discrimination against Jews, Roma and persons of African and Asian origin (*ibid.*, para. 10), the issue of actions taken with the aim of appropriate conduct of proceedings in cases concerning incitement to racial hatred is discussed in paragraphs 59-62 and 72-73 below.

7. Training courses for police officers concerning the procedure in cases of racism acts, as well as preventing and combating ethnically motivated crimes were organized, inter alia, within the framework of the Pilot Governmental Programme for the Roma Community in the Małopolskie Voivodeship for the years 2001 to 2003 and Programme for the Roma Community in Poland planned for the years 2004 to 2013. The training sessions were aimed at improving the security of the Roma people, increasing their awareness as regards victimization and legal issues, increasing confidence between the police and the Roma people, overcoming barriers consisting in mutual prejudice of police officers and the Roma people and preparing police officers for the work in the Roma environment. During the training sessions, police officers familiarized themselves with the culture, traditions and customs of the Roma community. The training was carried out by specialists and leaders of local Roma communities.

8. Apart from participating in training devoted to, inter alia, the Roma community, representatives of the police participated in conferences, seminars and training sessions on the issues of preventing discrimination against national and ethnic minorities, including the conferences entitled “Roma in the Subcarpathian Region: Tradition and the Present Time” and “Against Discrimination: Roma - the Administration - the Police”, constituting part of the European project of the Organization for Security and Co-operation in Europe (OSCE) on the improvement of relations between the Roma community and law enforcement authorities.

9. Police Commanders’ Plenipotentiaries for Human Rights Protection initiate actions aimed at the proper detection and sentencing of perpetrators of ethnically motivated crimes; they also coordinate police officers trainings on discrimination prevention (for more information about Voivodeship Police Commanders’ Plenipotentiaries for Human Rights Protection, see paragraph 76). The police carry out numerous activities for the Roma community, e.g.:

- Monitoring instances of discrimination towards the Roma community, violence towards the Roma people and offences committed to their detriment.
- Carrying out training sessions for police officers in county/municipal headquarters concerning rules of conduct in cases of reporting acts of violence resulting from prejudice against the Roma community (Małopolskie, Warmińsko-Mazurskie, Lubuskie and Śląskie Voivodeships).
- Cooperation with the Roma community.
- Selecting the police officers to be in permanent contact with Roma elders living in the area covered with the scope of activities of the competent - county or municipal - police headquarters.
- Ongoing cooperation with leaders (*voits*) of the Roma communities who mediate in all official contacts between the Roma people and the police (e.g. with the *voit* of the Roma people in Opole, the *voit* of the Prudnicki Roma people, the *voit* of the Brzeski Roma people).
- Cooperation with the “Bahtale Roma - Happy Gypsies” foundation based in Poznań.

- Cooperation with the Parish Elementary School for Roma children in Suwałki.
- Cooperation with Municipal/County Family Aid Centres, Social Aid Centres and schools with regard to support and prevention activities that are carried out in the Roma community (Świętokrzyskie Voivodeship).
- Cooperation with voivode's plenipotentiaries for national and ethnic minorities (Małopolskie, Wielkopolskie, Dolnośląskie Voivodeships).
- Involvement in support programmes addressing the Roma community. For instance, within the framework of the programme "Equalizing the opportunities of the Opatowski Roma people as regards their full participation in the integrated civic community, with particular focus on educational and social tasks", police officers carried out a cycle of meetings with the Roma people called "Neighbourly concord". Moreover, they participated in activities of the socio-therapeutic club, operating in Ostrowiec Świętokrzyski within the framework of Municipality Programme for Support to the Roma Families.

10. Anti-discrimination issues were the subject of training for 80 judges and public prosecutors from the whole country, which was organized in Popowo in May 2004, within the confines of the topic on substantive and legal aspects of criminal liability for crimes motivated by racial, national, ethnic or religious differences.

11. With regard to the Committee's concern about reports of irregularities during the census with regard to the recording of information of persons claiming a nationality other than Polish (ibid., para. 11), the National Population and Housing Census was carried out in Poland at the end of May and the beginning of June 2002. According to article 8 (1) of the Act of 2 December 1999 on the National Population and Housing Census 2002 (*Journal of Laws* of 2000, No. 1, item 1, as amended), answering questions concerning nationality and language spoken at home was obligatory. However, nationality was treated as a declarative feature (based on a subjective opinion). The census-taker was to enter into census forms information provided by the respondents. In each case, only one nationality was to be provided. The answer to the question concerning the language spoken at home could list up to three languages. In this case, the census-taker was to enter in the census form the information provided by the respondent. The answer to the question concerning language was given irrespective of the nationality declared.

12. Answers concerning nationality and language other than Polish were provided in an open form, i.e., the census-taker had no list of predefined nationalities or languages and his task was solely to record the answers provided by the respondent.

13. During the census, representatives of organizations of national and ethnic minorities voiced doubts and concerns as to the possible understating of the sizes of individual minorities resulting from imprecise formulation of the questions. Their doubts concerned also possible consequences of revealing census data regarding persons declaring a nationality other than Polish, should there be insufficient protection of personal data gathered in the census, as well as the influence of the sizes of minorities revealed by the census on State policy concerning these minorities. It should be stressed that all personal and individual data gathered in the national census, including data concerning nationality, is confidential and subject to special protection. Answers to questions



concerning nationality and language do not determine the respondent's status as member of a national minority. A person may be treated as a member of a national minority only at his/her own request - if he/she uses the rights of national and ethnic minorities, regardless of the answer provided in the census. Moreover, it should be stressed that the policy carried out by the Government of the Republic of Poland with regard to national and ethnic minorities and the size of financial resources allocated for them was never dependent on the size of individual minorities. Real needs and the activity of the minorities were decisive in this regard. The criteria for allocating financial funds do not contain the criterion of size of individual minorities. This situation has remained unchanged also after the national census.

14. Another problem reported was inappropriate work by census-takers. Representatives of national minorities reported cases of behaviour of census-takers that compromised the reliability of census results, such as: automatic insertion of the Polish nationality without asking the questions about nationality and language spoken at home; questioning respondents' statements concerning nationality or language spoken other than Polish, filling in the nationality and language fields of census forms in pencil.

15. It should be noted that irregularities encountered during the census were rare and met with immediate reactions during the census. All complaints filed were explained on an ongoing basis and resulted in immediate intervention by heads of statistical offices and municipality census commissioners.

16. Regarding the rights to housing and to employment of the Roma population, and the Committee's request that the State party include information on the economic, social and cultural rights of Roma (ibid., paras. 12 and 13), on 13 February 2001, the Council of Ministers adopted its Pilot Governmental Programme for the Roma Community in the Małopolskie Voivodeship for the years 2001 to 2003, coordinated by the Minister of Interior and Administration. Activities taken under the Pilot Programme were complex and covered issues related to the improvement of social and living conditions, health care, safety, culture, prevention of unemployment, maintaining Roma identity, disseminating knowledge on the Roma community and making widely known the reforms in Poland among the Roma minority. Educational tasks were deemed to be of priority character and their implementation brought about the most measurable results, translating into improvement in school attendance rates and school results for Roma children and youth.

17. Moreover, under the Pilot Programme a number of investments in the infrastructure of Roma housing estates and households (renovations, constructing and plumbing works) were carried out. Visiting nurses were also employed to work among the Roma people and provide basic aid and medical information. Unemployed Roma people participated in qualification-upgrading courses. Also, workplaces were organized, also within the framework of subsidized employment. Moreover, cultural events were organized and books and multimedia on Roma history and culture were published. In 2002, TVP Kraków started broadcasting a bilingual TV programme *The Roma News - Romano Ciacipen*, co-financed from the Pilot Programme funds.

18. Following the effectiveness of the Pilot Programme, its follow-up was prepared: the Programme for the Roma Community in Poland, adopted by the Council of Ministers on 19 August 2003. The main target of the programme was to promote full participation of Roma people in the life of civil society and diminish differences between this group and the rest of society. The preparation of the programme was widely discussed with the Roma community, inter alia in the Subgroup for Roma Issues within the Team for National Minorities, which included leaders of all Roma organizations in Poland.

19. The implementation of the Programme for the Roma Community in Poland was launched in 2004. It was expected to close in 2013, but an opportunity for a follow-up in further years was left open. A special reserve has been earmarked in the State budget for that purpose, managed by the Minister of Interior and Administration; funds from this reserve are taken on the Minister's request and transferred through *voivodes* or directly to individual entities that implement the programme's objectives. Apart from funds coming from the special reserve, the financing of the programme may be supplemented by funds disposed of by individual ministers and local self-government entities.

20. New possibilities with regard to the financing of the programme were created by the Act of 6 January 2005 on national and ethnic minorities and on regional language (*Journal of Laws* of 2005, No. 17, item 141, as amended), whose article 18 (2) (10) provides for the possibility of providing grants for programmes supporting the civil integration of minorities. In 2004, the earmarked reserve amounting to PLN (Zł) 5 million; PLN 1 million from the budget of the former Ministry of National Education and Sport (MENIS, now the Ministry of National Education), was assigned to the programme. In 2005, the funds for the programme from the special reserve amounted to PLN 5 million. This was supplemented by PLN 700,000 from the budget of MENIS. These funds are annually supplemented with the amounts coming from self-government entities that implement the programme's objectives.

21. Activities taken under the programme are complex and cover issues related to education, the improvement of social and living conditions (including investments in the infrastructure of Roma housing estates and houses), health care (including financing the work of visiting nurses), safety, prevention of unemployment and ethnically motivated crimes, disseminating knowledge of the Roma minority and making the reforms in Poland widely known in the Roma community.

22. On the list of priorities resulting from the programme, the improvement of living conditions of the Roma minority is placed directly after education (regarding the education of Roma children, see paragraphs 27-38 below). Under the "Improvement of living conditions" component, the priority goes to investment tasks aimed at improving housing and sanitary conditions: providing water and sewage systems connections, as well as supplying water and electricity. These activities were carried out in the following Voivodeships: Małopolskie, Podkarpackie, Podlaskie and Zachodniopomorskie. Moreover, one of the main priorities continues to be the improvement of extremely difficult housing conditions of Roma families. In 2004, a number of renovation works were carried out in 28 flats and buildings. In 2005, a total of 177 flats were renovated in seven Voivodeships.

23. Under the programme, activities were also aimed at regulating the issues of the ownership of plots with buildings inhabited by Roma people (municipalities: Czarny Dunajec, Szaflary and Krościenko and Dunajcem in Małopolskie Voivodeship).

24. For the purpose of the professional activation of the Roma community, a number of initiatives were taken to create new workplaces and increase the employment rate of Roma persons. Such projects were implemented in cooperation with county labour offices. These activities were supplemented with short-term employment for Roma persons in cleaning works. In 2005, 56 Roma persons worked in subsidized workplaces. At the same time, training sessions were organized to improve and modify professional qualifications; job counselling was also provided.
25. Another issue in the programme are health problems resulting from the difficult living conditions of the Roma people. In 2005, throughout Poland 1,107 Roma persons were covered by medical prevention tests and vaccinations. Prevention measures consisted mainly in employing and co-financing the work of visiting nurses who provided direct medical aid and medical counselling and distributed medicines and personal hygiene articles purchased with subsidies. In 2005, six visiting nurses were employed in total. The above activities were supplemented by the so-called "white days" when doctors of different specializations provided medical consultations free of charge.
26. The issue of economic, social and cultural rights of the Roma is discussed in a wider manner in the section below devoted to article 5 of the Convention.
27. Regarding the specific educational needs of Roma children (see *ibid.*, para. 13), children and young people of Roma origin enjoy the statutory right of access to education on equal terms with all pupils subject to obligatory schooling. A great majority of the Roma students attend public schools and they are taught within an integrated system, together with their Polish peers. Such an organizational solution is compatible with the demands of Roma organizations in Poland.
28. An important step towards the improvement of the educational situation of the Roma minority in Poland was the adoption by the Council of Ministers on 13 February 2001 of the Pilot Governmental Programme for the Roma Community in the Małopolskie Voivodeship for the years 2001 to 2003, in which educational tasks were given the highest priority. Their implementation brought about the most measurable results, translating into increase in school attendance rate and school results of Roma children and youth. According to MENIS, which participated in financial and organizational terms in the implementation of the educational module, the Pilot Programme covered about 500 Roma students in 60 schools of 15 municipalities of the Małopolskie Voivodeship.
29. The summary of results of the Pilot Programme shows that out of 427 students attending primary and secondary schools, 337 were promoted to the next grades and 69 graduated from their schools (46 from elementary school and 23 from lower secondary school). About 15 per cent of Roma students graduated from their schools with good results. The number of children attending preparatory grades in kindergartens or in schools within the framework of preschool education (the so-called "0" grades) increased to 69.
30. Educational tasks have been deemed a priority also in the Programme for the Roma Community in Poland. Its main aim is the improvement of the teaching level for and the attendance rate of students of Roma origin. Reports drawn up by *voivodes* in cooperation with chief education officers indicate that attendance rates of Roma children at schools have been

gradually increasing. The attendance rate of Roma students fulfilling their educational obligation ranged in school year 2004/05 from 68.3 per cent (Świętokrzyskie Voivodeship) to 85 per cent (Pomorskie Voivodeship). Still, the school marks of these students ranged between “pass” and “satisfactory”. In several Voivodeships, however, an improving trend has been noted.

31. In some Roma communities, numerous problems have been noted in the educational process. The main problem is a poor command of the Polish language by children entering education, and the frequent absence of reading and writing skills at the preschool education level. The activities in the educational field were thus supplemented with material aid. The aid consisted mainly in financial grants allowing for systematic kindergarten or “0” grade attendance by Roma children, as well as provision of the most needy students with textbooks, school equipment and didactic aids, as well as - though to a lesser extent - co-financing of school meals, costs of travel to and from school, and insurance.

32. Particular attention was given to programmes for Roma education assistants and teachers supporting education of Roma children. The task of the Roma education assistants is to ensure comprehensive support for the children and teenagers from integrated classes at and after school, as well as to cooperate with parents of Roma students. In the school year 2004/05, under the Programme for the Roma Community in Poland, 91 Roma education assistants were employed.

33. Support teachers pay particular attention to Roma children, treating them at an early stage of education as speakers of a foreign language and bicultural persons. Their duties include supervision of the learning progress of children, compensatory classes on the Polish language and other obligatory subjects, as well as other educational classes aiming at supporting their ethnic identity, assistance in doing their homework and constant contact with their families. In the school year 2004/05, 119 support teachers were employed under the programme throughout Poland.

34. In 2004, training sessions were organized to improve the professional qualifications of Roma education assistants and supporting teachers who work with Roma children; 92 teachers and 61 assistants from throughout Poland participated in the training. In 2005, similar training courses were organized and covered 53 support teachers and 43 Roma education assistants.

35. When assessing the activities taken up in the field of education, one must stress clearly that their base is an integrated model of activities. This unambiguous consensus, generally accepted by Roma partners, as well as the results achieved so far, contradicts the perennial false accusations that the State administration supports segregation of Roma students in so-called Roma classes. Roma classes, whose number systematically decreases (at present there are fewer than 10), are a margin of education for Roma children and youth. These classes are designed mainly for children and youth who have had breaks in their education, lasting sometimes even several years (e.g., due to a stay abroad). Moreover, it must be stressed that participation in Roma classes has never been forced, but is a result of a clearly expressed will of parents of Roma students.

36. Another group of tasks in the field of education were pedagogical and educational programmes for Roma parents and children, including psychological and pedagogical counselling, as well as additional and compensatory classes. Providing equal educational opportunities to Roma children and youth was brought about mainly through extracurricular

compensatory classes in various subjects, as well as corrective, compensatory and speech therapy classes. Summer camps and play centres, winter camps, scout camps, sightseeing tours, sports and recreation activities were also co-financed.

37. In 2004, within the framework of contests held for Roma university students, about 40 scholarships for Roma university students and over 12 scholarships for artistically gifted Roma students were to be granted each year. In 2005, the scholarship programme covered 10 students and 44 university students. Moreover, over 200 educational sets containing books and multimedia publications were purchased and sent to schools; Roma education assistants and persons were engaged in the matters of the Roma community.

38. Based on provisions of the Regulation of the Minister of National Education and Sport of 3 December 2002 on Conditions and Methods of Performing Tasks Allowing to Sustain the Sense of National, Ethnic, Linguistic and Religious Identity of Students from National Minorities and Ethnic Groups by Public Schools and Educational Facilities (*Journal of Laws* of 2002, No. 220 item 1853), schools can organize additional classes for students of Roma origin, including compensatory classes. Moreover, schools attended by students of Roma origin may employ teachers supporting their education and Roma education assistants. Schools organizing additional classes receive a reimbursement from the State budget in the form of an educational subvention increased by 100 per cent (in the years 2003-2004 this rate was 50 per cent). According to data provided by the Central Statistical Office, in the school year 2003/04, 72 schools with Roma students throughout Poland were covered with such increased subventions. In the school year 2004/05, this number increased to 119, and the number of students to 1,032.

39. Regarding human rights education in the school curriculum of the State party and the Committee's encouragement to expand these efforts beyond the school system (*ibid.*, para. 14), human rights issues are included in the minimum curriculum for general education and are a part of the teaching of: the "History and society" subject and "Education for life in society" in primary school, the "European education" project in lower secondary school, as well as in the "Civil education" subject in upper secondary school. Moreover, all curricula and textbooks, before approval for use, must be accepted as complying with the international agreements and treaties entered into by Poland, including the European Convention on Human Rights. The propagation of the idea of human rights at school and education in a spirit of tolerance and mutual respect of the rights of an individual and a group are significant elements in the Polish educational system and belong to the pedagogical priorities of schools.

40. Moreover, all universities in Poland have divisions or chairs of European law or human rights. These issues are soon to be included in teaching standards for the university field "Law and European matters". Additionally, numerous Polish universities launch postgraduate studies in European law and human rights. (The issue of propagating knowledge and attitudes concerning human rights is discussed in paragraphs 61-77 below.)

41. Regarding the encouragement by the Committee to consult with organizations of civil society working to combat racial discrimination (*ibid.*, para. 15), information on the preparation of the report was placed on the website of the Ministry of Interior and Administration when launching its drafting. Non-governmental organizations and scientific and research institutions were asked to send proposals, suggestions and conclusions concerning the document in question

at an introductory stage of its preparation. During a round table organized for the purpose of consultation with social partners of the assumptions of the Law Enforcement Programme on Combating Hate Crimes, over 20 NGOs specializing in issues of racial discrimination, racism and anti-Semitism were informed about an opportunity to send remarks and suggestions to the developed document. Subsequent versions of the report were sent to almost 30 NGOs for consultation.

42. Regarding the Committee's request for information on action plans or other measures taken to implement the Durban Declaration and Programme of Action (*ibid.*, para. 16), in order to fulfil the obligations stemming from the Action Plan adopted by the World Conference against Racism, the Council of Ministers adopted the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance on 18 May 2004. The programme will be implemented in the years 2004-2009 with the possibility of its extension by competent ministers, central bodies of government administration, central public institutions, the Commissioner for Civil Rights Protection, public media and government administration in Voivodeships, in close cooperation with NGOs. The objective of the National Programme is to perform tasks aimed at combating xenophobia and racism, including anti-Semitism, and developing a culture of tolerance in a wide sense in Polish society. The tasks are carried out in the areas of research, statistics, education, culture, health care, media, employment, social situation of refugees, members of national and ethnic minorities, migrants and other persons who may suffer discrimination on grounds of their ethnic or racial origin. These groups were deemed to be direct beneficiaries of the programme.

43. The text of the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance can be found, among other places, at the website [www.mswia.gov.pl](http://www.mswia.gov.pl); it was also published in a form of a booklet and given to representatives of central and local administration, Plenipotentiaries of Voivodeship Police Commanders for Human Rights Protection, NGOs, judges, lawyers and police officers (see annex 3).

44. The Committee also recommended that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized. Information on the previous reports on Convention implementation, together with observations and recommendations of the Committee are available at the websites of the Ministry of Interior and Administration ([www.mswia.gov.pl](http://www.mswia.gov.pl)) and the Ministry of Justice ([www.ms.gov.pl](http://www.ms.gov.pl)). These issues are discussed in detail in paragraph 74 below.

## II. GENERAL PART

### A. Actions of the Republic of Poland in the international arena in the field of human rights in the period covered by the report

45. On 5-7 July 2000, the Regional Seminar of Experts on the subject of combating racism, racial discrimination, xenophobia and related intolerance in Central and Eastern European States was held in Warsaw. The seminar was a part of a cycle of meetings preparing for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, from 31 August to 7 September 2001, and was organized in cooperation with the Office of the United Nations High Commissioner for Human Rights.

46. The Republic of Poland participated in the World Conference against Racism, and fulfilled the obligations adopted at this Conference (paras. 42-44 above).

47. The President of the Republic of Poland ratified the amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature at New York on 7 March 1966 and the ratification documents were submitted on 23 August 2002.

48. On 10 November 2000, the President of the Republic of Poland ratified the Framework Convention for the Protection of National Minorities, done at Strasbourg on 1 February 1995, which on 1 April 2001 entered into force in relation to Poland.

49. On 23 November 2001, the Republic of Poland signed the Convention on Cybercrime, signed at Budapest on 23 November 2001, and, on 21 July 2003, the Additional Protocol to the Convention on Cybercrime, Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, signed at Strasbourg on 28 January 2003.

50. On 12 May 2003, the Republic of Poland signed the European Charter for Regional or Minority Languages; the procedure of ratification of this document is currently in progress.

51. On 18 August 2003, the President of the Republic of Poland ratified the Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, adopted by the United Nations General Assembly on 15 November 2000, supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000. On 21 December 2003, the protocol entered into force in relation to Poland.

52. On 22 December 2003, the President of the Republic of Poland ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, opened for signature at New York on 7 March 1966, which on 22 March 2004 entered into force in relation to Poland.

53. On 4 March 2005, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted in New York on 25 May 2000 and entered into force in relation to Poland.

54. On 7 March 2005, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted in New York on 25 May 2000 and entered into force in relation to Poland.

55. On 14 September 2005, the Republic of Poland ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 18 December 2002.

56. From 25 to 29 October 2004, the visit of European Commission against Racism and Intolerance, (ECRI) representatives took place in Poland within the framework of the third round of visits of the European Commission against Racism and Intolerance - ECRI (an organ of the Council of Europe). The ECRI delegates met with the representatives of the Polish government administration and NGOs. The third ECRI report on Poland was adopted on 17 December 2004

and published on 14 June 2005. On 8 November 2005, the so-called round table was organized to discuss the report. It was attended by the representatives of ECRI, the Government and NGOs which provided information constituting the base for drawing up the report.

57. Between August 2003 and November 2004, Poland also implemented the Project PHARE PL 2002/000-605-01-02 Strengthening Anti-Discrimination Policies developed in the framework of a twinning agreement between the Government Plenipotentiary for Equal Status of Women and Men and the Austrian partner, the Ludwig Boltzmann Institute of Human Rights. The project results include, inter alia:

- Analysing the situation of social groups discriminated in Poland as well as their needs in respect of protection and support
- Reviewing the binding legislation, judicial practice and policy of public bodies in the scope of counteracting discrimination as well as identifying possible improvements in this respect
- Drawing up proposals for actions and programmes aimed at counteracting discrimination as well as recommendations concerning the improvement of institutional solutions in the scope of implementing anti-discrimination policies
- Training of a group of trainers from NGOs, who in the future would conduct training and workshops on discrimination and standards of its prevention
- Drawing up and evaluating a training programme on increasing awareness, shaping attitudes and implementing anti-discrimination measures and strategies
- Conducting instructional training on increasing awareness, shaping attitudes and implementing anti-discrimination measures and strategies or trainers from the following professional groups: the Police officers, civil servants (also at the Voivodeship level), labour inspectors, judges, lawyers, employees of educational institutions and journalists, who will conduct similar trainings in their corporations

58. Actions of NGOs aimed at counteracting discrimination due to race and ethnic origin were also subsidized under this project. The amount of EUR 560,000, i.e. over half of the budget, was distributed on the basis of the competition procedure concerning so-called Small Grants.

59. Under the Community Action Programme to Combat Discrimination 2001-2006, three projects have been conducted:

- Implementation of the Community Anti-Discrimination Legislation in Poland, which comprised trainings of judges, lawyers and representatives of NGOs; two handbooks were also published and distributed: *Counteracting Discrimination in Poland - How to Defend your Rights*, and *Counteracting Discrimination in Poland - Legal and Institutional Aspects*.
- “Developing the Attitude of Tolerance Towards Diversity”, which included, inter alia, a competition for art students to design an anti-discrimination poster, post-competition



exhibition, printing of the rewarded posters, devising and distributing of the so-called first contact leaflets for employees and employers on the subject of counteracting discrimination due to race, ethnic origin, religion, denomination, age, disability and sexual orientation, as well as conducting 5 anti-discrimination workshops targeted at judges, prosecutors, border guard and police officers, journalists and representatives of trade unions (a total of about 250 persons).

- Euroequality - Promotion of Anti-Discrimination Institutions 2004-2006, conducted in cooperation with Spain (coordinator), Finland, Belgium, Ireland and Bulgaria. The project was intended to strengthen the structure and organization of the government and non-governmental institutions that deal with counteracting discrimination on grounds of race and ethnic origin. This was achieved through better cooperation among the above-mentioned countries in respect of, inter alia, devising an institutional model of counteracting discrimination and mechanisms of cooperation between institutions counteracting discrimination and their social partners. In the reporting period, the project was under implementation.

60. The Republic of Poland participated also in the social campaign For Diversity. Against Discrimination, which lasted from 2003 to 2006 and was aimed at increasing the awareness and knowledge of Polish society about different forms of discrimination. The Government Plenipotentiary for Equal Status of Women and Men was the coordinator of the campaign. The campaign message was targeted particularly at persons from groups at risk of discrimination as well as at employees, employers and representatives of trade unions.

## **B. Human rights**

61. In Poland, a knowledge of human rights is more and more widespread and propagated among various professional groups, including through a system of centrally organized training sessions.

62. Since March 2004, in the framework of its training activities, the Ministry of Justice has been conducting a series of training sessions concerning issues included in the Convention. Training projects were carried out pursuant to the concluding observations of the Committee for the Elimination of Racial Discrimination. Issues concerning combating racial discrimination are also discussed at training sessions for court and prosecutor's trainees in the framework of classes on material criminal law. Furthermore, lectures on human rights and their protection are taken into account in the programme of legal counsel training (and also constitute one of the fields at the legal counsel exam) and barrister training. The Commission for Human Rights has been functioning at the Polish Bar Council for 10 years. The Commission organizes, in cooperation with the Information Office of the Council of Europe in Warsaw, annual cycles of seminars for barristers and barrister trainees, concerning the European Convention on Human Rights; the seminars also include a study visit at the European Court of Human Rights in Strasbourg.

63. Since 2004, the Ministry of Foreign Affairs has been carrying out an information campaign on the United Nations called "UN Awareness". In 2004, as part of this campaign, seminars were organized for NGOs dealing with combating racism, racial and ethnic discrimination,

xenophobia and anti-Semitism, as well as for the media and regional authorities. The seminars were aimed at increasing awareness of anti-discrimination activities of the United Nations. During the seminars, the participants were also informed on the possibility and manner of lodging individual complaints to the treaty bodies.

64. Through the National In-Service Teacher Training Centre, the Ministry of National Education also organizes training sessions on human rights. Training is targeted to: office education employees, headmasters, teachers, educators and employers at teacher training centres. A training network called Trainers for Education in Human Rights was established; it consists of educators who conduct trainings in human rights in all Voivodeships. The National In-Service Teacher Training Centre organizes regular meetings for this group, allowing trainers to share experiences and to support each other.

65. Anti-discrimination issues were included in the training programme for public functionaries, for example in training for the border guard officers at all levels. The issues of racism, racial discrimination and intolerance were included in the curriculum for the border guard officers - a separate subject called the "Basics of intercultural communication" was included in the programmes of specialist training required for promotion to officer rank, first level, in operational and investigative specialties. The human rights issues are also raised at training sessions for border guard officers, organized in cooperation with national and foreign institutions, for example under the PHARE Twinning Programme PL2001/IB/JH/01b on Migration and Visa Policy and PL/IB/2002/JH/02 on Asylum Policy, carried out in cooperation with the Bundespolizei (German Federal Police).

66. Also, the Central Board of Prison Service took action to make prison officials and employees sensitive to the issues associated with any form of intolerance. In 2004, the general and specific curricula of preparatory courses and all types of Prison Service schools included such issues as trafficking in human beings, counteracting racial and ethnic discrimination, counteracting and combating anti-Semitism, xenophobia and intolerance. These issues were also addressed in the annual training programmes for prison officers and employees responsible for complaints, requests and applications from inmates.

67. In 2005, the Programme of actions in the area of professional ethics of customs officers for 2005-2007 and the Annex to the programme of basic customs course were developed. The programme concerns, inter alia, the development of anti-racist attitudes as well as attitudes related to counteracting anti-Semitism, xenophobia and intolerance. The module of professional ethics in the basic customs course was expanded to include issues concerning counteracting xenophobia and intolerance; at customs chambers and basic customs courses the classes in the scope of issues of counteracting racism, xenophobia and related intolerance are conducted by trained coordinators for professional ethics in the Customs Service.

68. Workshops on human rights are carried out in the framework of centrally organized training sessions for the police as well. In 2004, the syllabus of the basic course was supplemented with an eight-hour workshop covering the following issues: perceiving oneself and group identity, perceiving others, the role of prejudice, discrimination and its aspects, and discrimination from a legal perspective. The issues concerning counteracting discrimination became a permanent element of the basic training of police officers. The notions of prejudice,

stereotypes, discrimination, its sources and forms, discrimination from a perspective of the labour code are discussed during three-hour classes conducted under the Programme of vocational training for university graduates - First degree in human resources management.

69. A change in educational policy directed to police officers, i.e. outlining the curriculum minimum in the area of human rights and anti-discrimination for candidates, the basic course, management courses and postgraduate studies organized in the Higher Police School in Szczytno, should be emphasized.

70. In 2004, methodological standards and didactic materials were prepared for training of the representatives of the police units at basic and urban levels. In 2005, over 60,000 officers of the police field units were trained on this basis. The training was intended to make police officers sensitive to diversity and aware of the existence of the phenomenon of discrimination and the possibility and necessity to prevent it, counteract it and react to it, and to improve their legal background in respect of discrimination.

71. Apart from training, a number of publications were worked out and disseminated. The publication of the National In-Service Teacher Training Centre entitled *Prawa człowieka. Jak o nich uczyć?* (Human Rights: How to teach about them?) includes elements of methodology of teaching human rights to adults and children. It includes scenarios of classes on human rights for all educational stages. The publication contains information on history of human rights and it is a handbook for trainers and teachers. It is similar to the handbook *Compas: A Manual on Human Rights Education with Young People*, a comprehensive handbook which was published by the Council of Europe and disseminated among trainers, NGO representatives and teachers.

72. The handbook *Antydyskryminacja - pakiet edukacyjny* (Anti-discrimination - Educational Package) is of a similar character. It contains training materials and lesson plans, as well as basic information on the identification of cases of racism, discrimination, xenophobia and anti-Semitism, as well as combating and preventing them. The handbook was worked out by the National In-Service Teacher Training Centre on the basis of training materials developed by an international group of experts under the Twinning Project PHARE 2002 "Strengthening Anti-Discrimination Policies". In the framework of this project, a report summarizing the results of implementing this project "Prawne i instytucjonalne aspekty przeciwdziałania dyskryminacji" ("Legal and institutional aspects of counteracting discrimination") has been published and disseminated among the following professional groups: judges, barristers, government officials and representatives of NGOs.

73. In 2004, the Ministry of Justice prepared "Opracowanie dotyczące zwalczania dyskryminacji rasowej" ("A study on combating racial discrimination"), which included a summary of international regulations and judicature of international institutions in that regard, as well as a description of practical cooperation between the police forces and Prosecutor's Offices in selected countries in respect of fighting racism-based crime. The study provides practical solutions and best-practice standards developed in other countries. It is intended to stimulate discussions on the need and possibility to work out similar mechanisms in Poland. It was distributed in Prosecutor's Offices, common courts of law, district courts and courts of appeal; it was also submitted to the National Prosecutor's Office, the Ministry of Interior and Administration, the General Headquarters of Police and Plenipotentiaries of Voivodeship Police Commanders for Human Rights Protection.

74. In 2005, the Institute of Justice worked out a compendium (*Przestępstwa z art. 256 i 257 k.k. - analiza dogmatyczna i praktyka ścigania*, or Crimes under articles 256 and 257 of the Penal Code - dogmatic analysis and prosecuting practice) which was disseminated in courts and prosecutor's offices to ensure appropriate conduct of proceedings in such cases.

75. The Government takes actions aimed at disseminating knowledge on human rights in the general public, so the citizens would be aware of their rights. To this end, information is published on websites of the Ministry of Justice, the Ministry of Interior and Administration and the Parliament (the Sejm). Apart from the texts of conventions concerning human rights, these websites contain current periodic reports of the Government, information on the possibility of lodging complaints to individual Committees as well as examples of complaints. This report and final comments of the Committee issued after its examination will also be published on the websites of the Ministry of Justice and the Ministry of Interior and Administration. In 2004, the Ministry of Justice published and widely disseminated a publication, "Realizacja przez Polskę postanowień Międzynarodowej konwencji w sprawie likwidacji wszelkich form dyskryminacji rasowej. XV i XVI Sprawozdanie okresowe" on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination by Poland, as set out in its fifteenth and sixteenth periodic reports. The publication contains brief information on the rules on examining the reports by the Committee on the Elimination of Racial Discrimination, the text of the report, minutes of the meetings, final comments of the Committee on the Elimination of Racial Discrimination, the text of the Convention, an example of a complaint and an explanation of the rules of submitting the complaint to the Committee. The publication is also posted as a PDF file on the website of the Ministry.

76. Protection against racism, xenophobia, anti-Semitism and related intolerance entered an institutional phase in the reporting period. In 2003, a post for combating racism and xenophobia was created at the National Prosecutor's Office. The competence of this post includes dissemination of statistical data on the results of proceedings and rulings in respect of crimes on ethnic grounds.

77. In order to intensify activities aimed at counteracting racism, xenophobia and discrimination on ethnic grounds, a Monitoring Team on Racism and Xenophobia was established in 2004 at the Ministry of Interior and Administration. Its duties include, inter alia:

- Maintaining a database on individual instances of discrimination due to race and ethnic origin, anti-Semitism and xenophobia
- Developing and implementing the social and demographic data collection and analysis system in cooperation with other government administration units in order to monitor the phenomena of racism, racial discrimination and xenophobia
- Cooperating with international organizations, including, inter alia: the Office for Democratic Institutions and Human Rights, the Organization for Security and Co-operation in Europe, the European Union and the Council of Europe

- Making reports on the cases of ethnic discrimination, racism and xenophobia present in Poland; the Team takes the above actions in close cooperation with domestic NGOs active in the sphere of counteracting and combating racism, anti-Semitism, discrimination on ethnic grounds and xenophobia

78. In 2004, Plenipotentiaries for Human Rights Protection were appointed within the General Headquarters of Police, in all 16 Voivodeship Police Headquarters, in Warsaw Metropolitan Police Headquarters and all Police Schools. Their tasks consist in monitoring the implementation of recommendations formulated by the human rights organizations for Police in its operational activities. The Plenipotentiaries deal with the tasks such as gathering data on good practice in respect of protection of human rights and rights of victims, dissemination of information among police officers; monitoring racial discrimination (including anti-Semitism and xenophobia) and activities undertaken by the Police to cooperate with national and ethnic minorities. The competence of Plenipotentiaries also includes initiation of control and supervisory activities in respect of human rights and activities aimed at increasing the knowledge and skills of police officers in respect of human rights; cooperation with non-departmental institutions and organizations dealing with the issues of human rights protection.

79. The projects concerning human rights were carried out by NGOs owing to financial support from the Government under the Phare 2003 programme "Support for the justice system", implemented by the Ministry of Justice. In September 2005, grants were awarded for the implementation of 45 projects aimed at social reintegration and increasing the legal awareness of the condemned persons. One of the completed projects was aimed at developing new forms of work with young Roma people through increasing their participation in defining and solving problems concerning the fact of being a victim or a perpetrator of a crime. It also developed a new concept of cooperation between the civil service and the Roma community in the scope of solving the above-mentioned problems.

### **C. National and ethnic minorities**

80. On 10 November 2000, the Republic of Poland ratified the Framework Convention for the Protection of National Minorities, done at Strasbourg on 1 February 1995 (*Journal of Laws* of 2002, No. 22, item 209). According to article 25 (1) of the Convention, the report for the Secretary-General of the Council of Europe on the realization by the Republic of Poland of the provisions of the Framework Convention of the Council of Europe for the Protection of National Minorities was submitted on 10 July 2002. From 14 to 17 April 2003, the delegation of the Advisory Committee for the implementation of the Framework Convention stayed in Poland. The visit contributed to gathering further information and voicing the Committee's opinion on the implementation of the Framework Convention by Poland, adopted on 27 November 2003. Referring to the submitted opinion, the Government prepared written comments on the Opinion of the Advisory Committee. On 30 September 2004, the Committee of Ministers adopted the resolution on the implementation of the Framework Convention for the Protection of National Minorities by Poland. On 26 September 2005, the conference on the Implementation of the Framework Convention for the Protection of National Minorities by Poland, organized by the Ministry of Interior and Administration and the Council of Europe, took place. The conference recapitulated the first cycle of monitoring the process of implementing and observing by Poland the principles specified in the Framework Convention.

81. On 12 May 2003, the Republic of Poland signed the European Charter for Regional or Minority Languages. On 16-17 June 2003, an international conference, "From Theory to Practice - The European Charter for Regional or Minority Languages", was held. The speakers at the conference were experts from Poland, the Council of Europe and States signatories to the Charter. The conference was attended by members of parliaments, representatives of national and ethnic minorities and representatives of central and local governments.

82. In 2002, the National Population and Housing Census was carried out in Poland and for the first time since the Second World War the census included a question about nationality and the language used at home. The results of the census confirmed that national and ethnic minorities constitute a small part of Polish society. According to the census data, in 2002 0.7 per cent of the whole Polish population declared that it belonged to communities with the status of a minority, in accordance to the Act of 2 December 1999 on the National Population and Housing Census 2002 (*Journal of Laws* of 2000, No. 1, item 1, as amended).

**Table 1**

**Population of national and ethnic minorities as well as the community using the regional language<sup>1</sup>**

National, ethnic or language identification	Number of citizens of the Republic of Poland declaring to belong to a given nationality or to use the regional language
National minorities	
Germans	147 094
Belarusians	47 640
Ukrainians	27 172
Lithuanians	5 639
Russians	3 244
Slovaks	1 710
Jews	1 055
Czechs	386
Armenians	262
Ethnic minorities	
Roma	12 731
Lemko	5 850
Tartars	447
Karaims	43
Persons using a regional language	
Kashubian	52 567

<sup>1</sup> Data of the Central Statistical Office on the basis of the 2002 National Population and Housing Census.

83. On 6 January 2005, the Sejm of the Republic of Poland passed the Act on National and Ethnic Minorities and Regional Language. According to article 2 of this Act, the following minorities are recognized as national minorities: Belarusians, Czechs, Lithuanians, Germans, Armenians, Russians, Slovaks, Ukrainians and Jews. The following are recognized as ethnic minorities: the Karaims, the Lemko, the Roma and the Tartars. Furthermore, article 19 (2) of the Act guarantees the protection of the Kashubian language, which was recognized as a regional language, according to the definition contained in the European Charter for Regional or Minority Languages. The Act includes references to all principles comprised in the Framework Convention of the Council of Europe for the Protection of National Minorities. It includes an array of rights of national and ethnic minorities, a prohibition of discrimination on national or ethnic grounds and a prohibition of assimilation. In municipalities where the number of minority residents is no less than 20 per cent of the total number of the municipality residents, the Act provides for the possibility to use the minority languages as supporting languages before the municipal authorities. The introduction of the supporting language gives the persons belonging to a minority the right to apply to the municipal authorities in the supporting language, either in a written or oral form and obtain, on their request, an answer in the supporting language. The Act provides for the possibility to use additional, traditional place names in a minority language alongside official names of places and geographical objects as well as street names.

84. An additional name of a place or object in a minority language may be established upon the municipal council's application, provided that the number of municipality residents belonging to a minority is no less than 20 per cent of the total number of this municipality residents or that more than half of its residents who have taken part in the consultations were in favour of the establishment of an additional place name in the minority language. The Act also guarantees the right to officially spell first and last names according to the spelling rules of a minority language. A separate chapter on education and culture contains regulations concerning learning the native language and in the native language of a minority as well as the rules on financing cultural activity of national and ethnic minorities. The Act includes also the tasks of the public radio and television broadcasters in relation to national and ethnic minorities.

85. According to article 21 of the Act on National and Ethnic Minorities and Regional Language, the government agency in charge of matters concerning national and ethnic minorities is the minister competent for religious denominations and national and ethnic minorities. The minister's tasks include in particular:

- (a) Supporting the rights and needs of minorities through taking actions for the minorities;
- (b) Initiating programmes for the minorities in the areas of:
  - Preserving and developing identity, culture and language of the minority, as well as ensuring full civic integration for persons belonging to minorities
  - Implementing the equal treatment principle irrespective of the ethnic origin
- (c) Cooperating with the competent authorities in the area of counteracting the violation of minorities' rights;

(d) Analyses and assessments of the legal and social situation of minorities;

(e) Disseminating knowledge of minorities and their culture and initiating research into the situation of minorities, including the discrimination resulting from the minority membership, its manifestations and methods and strategies of preventing it from arising;

(f) Taking steps to preserve and develop regional languages.

86. The persons responsible for coordination of the actions of the organs of government administration fulfilling tasks on behalf of the minorities, including taking actions aimed at respecting the rights of minorities and counteracting discrimination of the minority members within Voivodeships are the Voivodes. To implement actions addressed to the minorities, the Voivode is obliged to cooperate with the self-government bodies and social organization and particularly with organizations of minorities.

87. The Joint Commission of Government and National and Ethnic Minorities - a consultative and advisory body of the Prime Minister - was also established on the basis of the Act on National and Ethnic Minorities and Regional Language. The Joint Commission consists of representatives of government administration agencies, national and ethnic minorities, as well as the community speaking the regional language. The tasks of the Commission include the following:

(a) Expressing opinions on the exercise of minority rights and needs, including an assessment of the way these rights are exercised, and proposing actions to ensure the exercise of minority rights and needs;

(b) Voicing opinions on programmes meant to serve conditions conducive to the maintenance and development of a minority's cultural identity, and the preservation and development of a regional language;

(c) Voicing opinions on draft laws concerning minorities;

(d) Voicing opinions on the amount and the principles of the distribution of the budgetary funds allocated to the support for activities aimed at protection, maintenance and development of the cultural identity of minorities and at the preservation and development of a regional language;

(e) Taking measures to counteract discrimination against persons belonging to a minority.

88. Furthermore, the detailed rights of minorities are regulated by a number of laws and ordinances. The rights resulting from these regulations are as follows:

- Public schools and educational facilities allow students from national minorities and ethnic groups to sustain and develop the sense of national, ethnic, linguistic and religious identity as well as own history and culture (Act on the System of Education of 7 September 1991 (*Journal of Laws* of 2004, No. 256, item 2572, as amended))
- The law provides for penalization of ethnically motivated crimes (the Penal Code)



- It is possible to use the help of translators during administrative, civil and criminal proceedings (*the Code of Administrative Procedure, the Code of Civil Procedure and the Code of Penal Procedure*)
- It is prohibited to process data disclosing ethnic origin, except for in the enumerated cases (Act of 29 August 1997 on the Protection of Personal Data (*Journal of Laws* of 2002, No. 101, item 926, as amended))

89. Names and texts in Polish in localities where there are circles of national or ethnic minorities may be accompanied by versions translated into a foreign language (Act of 7 October 1999 on the Polish Language (*Journal of Laws* of 1999, No. 90, item 999, as amended) and the Regulation of the Minister of Interior and Administration on Cases in which Names and Texts in Polish May Be Accompanied by Versions Translated into a Foreign Language, issued on the basis of this Act (*Journal of Laws* of 2002, No. 37, item 349, as amended).

90. The matter of the education of children and young people belonging to national or ethnic minorities is discussed in paragraphs 224-230 below.

### **III. IMPLEMENTATION OF THE PROVISIONS OF ARTICLES 2 AND 4-7 OF THE CONVENTION**

#### **Article 2**

91. In Polish law, racial discrimination is prohibited by the Constitution: article 32 of the Constitution of the Republic of Poland dated 2 April 1997 (*Journal of Laws* No. 1997, item 78, as amended) and the provisions of Directives 2000/43/EC and 2000/78/EC, which had to be applied by Poland in relation to the country's accession to the European Union as well as by statutory provisions.

#### **A. Prohibition of discrimination in the light of the provisions of the Penal Code**

92. General prohibition of racial discrimination is provided for in the Constitution as well as in the Act of 6 June 1997 - the Penal Code (*Journal of Laws* of 1997, No. 88, item 553, as amended). In Polish criminal law, the subject matter under discussion is referred to in the provisions of various articles of the Penal Code: of article 118 (1), (2) and (3) (genocide aimed to annihilate a racial group), article 119 (1) (violence, illegal threat towards a group or an individual due to e.g. their racial identity), article 119 (2) (public incitement to commit a crime defined in article 119 (1)), article 256 (public promotion of fascist and other totalitarian system of State or inciting hatred based on national, ethnic, racial or religious differences) and article 257 (public insult of a group within the population or individual persons because of their national, ethnic, racial or religious affiliation).

93. In the draft Act on the Amendment of the Act - the Penal Code and Some Other Acts, one of the proposed changes applies to the toughening of the sanction for the crime referred to in article 256 of the Penal Code so that it would be liable to deprivation of liberty for a term of up to three years. Nowadays, the said crime is subject to a fine, penalty of restriction of liberty or penalty of deprivation of liberty for up to two years. Furthermore, it is proposed to insert

paragraph 2 to article 256, according to which actions such as preparing, collecting, carrying or mailing a document, letter, recording, film or other material containing information referred to in paragraph 1 with a view to spreading this information will also be liable to penalties.

Paragraph 3, on the other hand, introduces the obligation for a court to rule on the forfeiture of objects that served or were intended to commit the above-mentioned crimes even if they were not owned by an offender. The draft Act was discussed at the meeting of the Committee of the Council of Ministers in March 2007 and then recommended to the Council of Ministers.

94. The practice to date in criminal proceedings shows that criminal activities which violate regulations protecting against all forms of racial discrimination are a marginal phenomenon in the country.

### **B. Prohibition of discrimination in the light of the provisions of the Labour Code**

95. The constitutional principles in the labour law are elaborated in, among others, article 11 of the Act of 6 June 1997 - the Labour Code (*Journal of Laws* of 1998, No. 21, item 94, as amended), and particularly in the chapter "II a", that is article 18 of the Labour Code. According to the Act of 24 August 2001 on the Amendment of Act - the Labour Code and Some Other Acts (*Journal of Laws* No. 128, item 1405, as amended), the principle of non-discrimination in employment became, due to the introduction of the chapter "II a" into the Labour Code on 1 January 2002, one of the basic principles of the labour law. This subject is discussed in detail in paragraphs 166-177 below.

### **C. Prohibition of discrimination in the light of the Act on National and Ethnic Minorities and Regional Language**

96. Article 6 (6) of the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language prohibits discrimination based on belonging to a national or ethnic minority. The Act obliges public authorities to undertake suitable actions aimed at: the promotion of full and real equality in all areas of economic, social, political and cultural life of the members of national or ethnic minorities and the majority; the protection of persons subjected to discrimination, hostility or violence on account of their belonging to national or ethnic minorities, as well as building dialogue between cultures. Moreover, article 21 (2) of the Act imposes on the minister competent for religious denominations and national and ethnic minorities duties related to e.g. the implementation of the principle of equal treatment regardless of ethnic origin.

### **D. Prohibition of existence of organizations and political parties whose programmes allow racial and national hatred**

97. The Constitution of the Republic of Poland (art. 13) prohibits the existence of organizations and political parties which refer in their programmes to totalitarian methods and procedures, such as Nazism, Fascism and Communism and whose programme or activity assumes or allows racial and national hatred, the use of violence to obtain power or to influence State policy or provide for the concealment of their structure or membership.

98. Other organizations promoting racial discrimination are prohibited and considered illegal under article 258 of the Penal Code, which provides that whoever participates in organized

criminal groups or associations whose main purpose is to commit a crime or a treasury crime shall be liable to imprisonment for three months to five years and if the groups or associations are armed or aimed at committing a terrorist act, the offenders shall be subject to imprisonment for six months to eight years. Furthermore, the acts of establishing and managing the said organizations shall also be subject to imprisonment for not less than three years.

99. The activity of extremist groups questioning the constitutional order of the Republic of Poland, including those inciting for hatred on national, racial or religious grounds is monitored by the Internal Security Agency. If the agency receives reliable information on committing a crime of propagating hatred on national or racist grounds, it can initiate criminal proceedings.

100. In 2005, within the framework of the National Programme for Combating Racial Discrimination, Xenophobia and Related Intolerance 2004-2009, the National Prosecutor's Office undertook activities aimed at establishing whether there were any organizations based on anti-Semitic or racist ideology operating in Poland. In particular, all appellate prosecutors' offices were ordered to check whether such organizations appeared in the preparatory proceedings conducted by their subordinate prosecutor's offices. In establishing that such organizations did exist, individual regional prosecutors' offices were obliged to implement administrative and legal measures with a view to making such organizations illegal. The results of the check, however, proved that there were no such organizations on the territory of Poland. As for the positive measures in the National Programme to Counteract Racial Discrimination, Xenophobia and Related Intolerance see paragraph 42 above, and with relation to the Programme for the Roma Community in Poland, see paragraphs 16-35 above.

#### **E. Integration movements and organizations among national and ethnic minorities**

101. According to the Act of 7 April 1989 - Law on Associations (*Journal of Laws* of 2001, No. 855, item 855, as amended), national and ethnic minorities in Poland may freely form associations. Since 1989, when the Act entered into force, approximately 206 associations of national and ethnic minorities have been registered. Such associations were formed by the Belarusian minority (12), the Lithuanian minority (8), the German minority (87), the Armenian minority (3), the Russian minority (5), the Slovakian minority (1), the Ukrainian minority (16), the Jewish minority (11), the Karaims minority (1), the Lemko minority (13), the Roma minority (44), the Tartar minority (1) and the community using the regional Kashubian language (4). Moreover, the Programme for the Roma Community in Poland is intended mainly to integrate the Roma minority and to enable it to fully participate in the life of the civil society.

102. Associations of national and ethnic minorities deal with a vast array of cultural and publishing activities aimed at maintaining their national and ethnic identity. Such activities are supported by targeted and subjective subsidies from the State budget. Priority has been given to all the activities performed by the organizations of national minorities and other entities with a view to preserving their language, traditions and cultural heritage as well as promoting the culture of national and ethnic minorities in Poland. Among these activities, particular significance is attached to the publishing of magazines, limited-edition publications and books written in national minority languages.

103. Within the framework of the basic cultural activity of the organizations of national and ethnic minorities, there are several dozen artistic groups that operate in Poland, including amateur choirs, dance groups, amateur theatres and music bands. They deal with the cultural education of young people by organizing seminars, courses and artistic workshops. They also aim at enriching the knowledge about national and ethnic minorities living in Poland and their cultural heritage.

104. Among artistic presentations which are of great significance to national and ethnic minorities and which, and this is worth stressing, draw a positive response from the Polish people, the following cultural events should be mentioned: the all-Poland Festival of Belarusian Song and the Belarusian Youth Music Festival “Basowiszcza”, Days of the Slovak culture in the area of Spisz and Orawa, celebrations of the anniversary of the Warsaw Ghetto Uprising organized by the Jewish community, meetings with the Jewish culture “Simcha” organized in Wrocław, festivals of Ukrainian culture held in several cities, Lemko *Watra* in Zdynia and Michałów, International Meetings of Gypsy Music Bands *Romane Dyvesa* in Gorzów Wielkopolski, rallies of artistic groups “Sąskrydis”, the Annual Festival of Barn Theatres of the Lithuanian community and many other local events organized by national and ethnic minorities. It is hard to overestimate the multicultural events such as the Festival of Nations-Europe without borders at Góra Św. Anny [St. Ann Mount] or the European Meetings of National and Ethnic Minorities “Pod Kyczerą” in Legnica.

105. Funds from the State budget are allocated not only for undertakings organized by the associations of national and ethnic minorities but also for events of great significance for the promotion of the culture of national and ethnic minorities such as the Festival of the Jewish Culture in Kraków or the International Festival of Orthodox Church Music in Hajnówka and for co-funding of the scientific and educational activity of the cultural institutions within the scope of the culture of national minorities, such as the Jewish Historical Institute - Scientific and Research Institute in Warsaw and the *Ośrodek Pogranicze - sztuk, kultur i narodów* (“Borderland” Foundation & Centre “Borderland of Arts, Cultures and Nations”) in Sejny.

106. Undertakings aimed at promoting cultures and traditions of national and ethnic minorities in Polish society are organized on the initiative of self-government authorities. It is worth distinguishing among them the activity of the professional State Jewish Theatre in Warsaw, which is financed by the self-government of the Mazowieckie Voivodeship. The Theatre puts on plays both in Polish and Yiddish and it also organizes training for novice actors. Non-governmental organizations, in cooperation with the cultural centres of the Warsaw self-government organize the Review of the Artistic Creation of National Minorities *Wspólnota w Kulturze* (Community of Culture). The District Museum in Tarnów is the organizer of cyclical meetings dedicated to the Roma culture. It is also the only museum in the world that has a permanent exhibition on the culture and history of the Roma people. Moreover, the Museum undertakes numerous actions related to the culture of Jews in Poland.

107. Appropriate actions to support equality in all areas of economic, social, political and cultural life of persons belonging to national and ethnic minorities and persons belonging to the majority have also been taken under programmes co-financed with the European Union funds. Examples of such activities include projects implemented under *Community Initiative Programme EQUAL for Poland 2004-2006* (CIP EQUAL), under which innovative solutions aimed at counteracting and combating discrimination and inequality in the labour market are

tested. The projects conducted under CIP EQUAL are also intended to devise new model solutions that would be later promoted as the so-called good practice and/or recommended as model solutions at the national, regional and sectoral levels. Actions taken under CIP EQUAL are targeted at social groups which are in an unfavourable situation on the labour market, including national and ethnic minorities. The Partnerships for Development founded in the period under discussion started testing the following model solutions aimed at counteracting discrimination of the Roma on the labour market:

- A model system for the improvement of the professional situation of the Roma community (under the Roma on the Labour Market project)
- A model of professional stimulation of the Roma through the creation of integrating social cooperatives (under the Partnership for the Professional Stimulation of the Roma through Social Economy Tools project)
- A model of institutional support for professional activity and entrepreneurship of the Roma. The idea of the Centre for Professional Stimulation of the Roma (under the project Initiative for the Development of the Roma Entrepreneurship - KXETANES - RAZEM)

#### **F. The Commissioner for Civil Rights Protection**

108. In 2000, the scope of competences of the Commissioner for Civil Rights Protection was extended by imposing on him the obligation to cooperate with associations, civil rights movements and other voluntary associations and foundations aimed at the protection of freedoms and rights of persons and citizens and to cooperate on child-related matters with the Ombudsman for Children as well as to examine the issues addressed to him by the Ombudsman. Furthermore, the Commissioner has the right to appeal to the Supreme Court against a sentence on civil cases unless the appeal has been filed by the party.

109. The Institution of the Commissioner has been described in detail in the fifth periodic report of Poland on the implementation of the provisions of the International Covenant on Civil and Political Rights for the period from January 1995 until 1 October 2003 (CCPR/C/POL/2004/5).

110. In the reporting period, the Commissioner for Civil Rights Protection initiated explanatory proceedings with regard to 74 cases, in which the complainants noted discrimination on racial, national or ethnic grounds, out of which the Commissioner for Civil Rights Protection completed the explanatory proceedings in 71 cases concerning the above-mentioned issues. In 29 cases the solution was positive, in 8 cases the Commissioner refrained from further proceedings and in 34 cases the charges were not confirmed. Among 74 cases initiated, 60 were analysed individually while in 14 cases the Commissioner for Civil Rights Protection submitted general statements to the competent public administration authorities. It should be emphasized that the issue of racism or discrimination was not the main reason for the complaint submitted to the Commissioner for Civil Rights Protection in all the above cases. Some of those cases applied to the penal law, penal executive law, activities of the Police and other law enforcement agencies or the housing issues.

111. The number of cases related to the problems under discussion and initiated by the Commissioner for Civil Rights Protection looks as follows (broken down by years):

- In 2000: 22 cases
- In 2001: 11 cases
- In 2002: 9 cases
- In 2003: 16 cases
- In 2004: 12 cases
- In 2005: 4 cases

### **G. The Ombudsman for Children**

112. The position of the Ombudsman for Children was established by virtue of the Act of 6 January 2000 (*Journal of Laws* of 2000, No. 6, item 69). The Ombudsman for Children is meant to safeguard the rights of the child, and in particular the right to life and protection of health, to the upbringing within a family environment, to appropriate conditions for human development and to education. The Ombudsman for Children undertakes actions aimed at the protection of a child against violence, cruelty, abuse, moral corruption, neglect and bad treatment. When fulfilling duties, the Ombudsman is guided by the principle of the child's well-being and takes into account the fact that the natural milieu for the child's development is the family. The Ombudsman undertakes actions on his initiative, considering in particular the information on the violation of the rights and well-being of the child. The purpose of the above actions is to ensure full and harmonious personal development with due respect given to the child's dignity and subjectivity. The Ombudsman attends with special care and assistance to disabled children.

113. The Ombudsman for Children is independent of other State authorities and accountable only before the Sejm. He may ask the official authorities, organizations or institutions to submit explanations and necessary information and to make files and documents including those containing personal data available. He can also ask the competent authorities, including the Commissioner for Civil Rights Protection, to undertake actions falling within the scope of their competences for the well-being of the child. Moreover, the Ombudsman has the right to present competent authorities with the proposals to take a legislative initiative or to issue or change legal acts. At the same time, the Ombudsman does not substitute for specialized services, institutions or associations dealing with the protection of the rights of the child but intervenes in the situation where undertaken procedures have turned out to be ineffective or have been abandoned.

114. In the reporting period, the Ombudsman took actions aimed at regulating the legal situations of juvenile foreigners staying in Poland without care or placed with their parents in centres for refugees. In order to achieve that, in 2005 the representatives of the Ombudsman for Children carried out an inspection of selected centres. During this period, the Commissioner for Civil Rights Protection did not receive any complaints concerning the discrimination on racial, national or ethnic grounds. More about the review the legislation, legal practice and policy of

State authorities aimed at the elimination of racial discrimination, see information on the twinning project “Strengthening anti-discrimination policies”, as set out in paragraph 57 above. The comments presented in the previous report with regard to articles 2 and 3 of the Convention remain valid.

#### **Article 4**

115. For further information on the prohibition of the existence of organizations and political parties referring in their programmes to racial and national hatred, see the comments relating to article 2, point G (75-78), and to point D (69-70) on prohibition of discrimination in the Penal Code.

116. The Republic of Poland joined the multi-annual Community programme on promoting safer use of the Internet and new online technologies which was established by virtue of decision No. 854/2005/EC of the European Parliament and the Council for the years 2005-2008. Under this programme, social actions are taken with respect to, among others, racist and xenophobic content on the Internet. The actions addressed by the programme include fighting against illegal content, tackling unwanted and harmful content, promoting a safer environment and awareness-raising.

117. In order to eliminate racist and xenophobic content from the Internet, the Ministry of Interior and Administration has established cooperation with the NIFC (National Initiative for Children) Hotline Poland Team of the Research and Academic Computer Network. One of the team’s tasks is to react to illegal content on the Internet that promotes fascist or totalitarian systems, racism, ethnic discrimination, xenophobia and anti-Semitism. Illegal contents on the Internet can be notified to authorities by phone, fax or e-mail 24 hours a day.

#### **A. Statistical data on the violation of the prohibition of discrimination**

118. Whoever publicly incites to hatred on account of national, ethnic, racial and religious differences or lack of any religious denomination or who publicly insults a group within the population or individual persons because of their national, ethnic, racial or religious affiliation or because of their lack of any religious denomination or for those reasons breaches the personal inviolability of another individual shall be prosecuted in Poland on the basis of articles 256 and 257 of the Penal Code, while under article 119 (1) and (2) of the Penal Code, it is prohibited to use violence or make illegal threats towards a group or an individual and to publicly incite the commission of such an offence.

119. In the years 2000-2003, 35 proceedings for offences committed on racist or xenophobic grounds were registered in prosecutors’ offices, among which 7 proceedings ended with filing a charge to the court and 28 proceedings ended with dismissal or rejection. In 2004, 24 cases were registered while in 2005 the number increased to 29. In 2004, 20 proceedings in total were concluded, among which charges were filed with respect to 6 cases, 9 cases were dismissed and 5 cases were rejected. In 2005, 37 proceedings in total were ended, among which charges were filed with respect to 7 cases, 17 cases were dismissed and 13 cases were rejected.

120. Within the scope of judicial decisions in the period from 2000 until 2005, there were no persons put on trial for the acts specified in article 118 (1), (2) and (3) of the Penal Code.

With respect to the acts defined in article 119 of the Penal Code, judgements were passed only in 2000 and 2003. In 2000, seven persons were put on trial for the act defined in 119 (1) of the Penal Code and all of them were sentenced: six persons were punished with a fine and one was sentenced to imprisonment. In 2003, five persons in total were sentenced to imprisonment for committing the acts referred to in article 119 (1) and (2) of the Penal Code. In 2004, three persons were put on trial for committing the acts specified in article 119 (1) of the Penal Code. All of them were sentenced: two persons were fined while one person was sentenced to imprisonment. In 2005, six persons were put on trial for committing the acts specified in article 119 (1) of the Penal Code. All of them were sentenced: one to restriction of liberty and five to imprisonment. In the years 2004-2005 no adults were put on trial for committing the acts specified in article 119 (2) of the Penal Code.

121. Statistical data related to the other crimes defined in articles 256 and 257 of the Penal Code is as follows:

(a) In 2000:

- Nine persons were put on trial for committing the acts referred to in article 256 of the Penal Code: proceedings in respect of three persons were conditionally dismissed and the other six persons were sentenced: five to imprisonment and one was fined.
- Thirteen persons were put on trial for committing the acts referred to in article 257 of the Penal Code: proceedings in respect of seven persons were conditionally dismissed and the other six persons were sentenced: four to imprisonment and the two others were fined.

(b) In 2001:

- Sixteen persons were put on trial for committing the acts referred to in article 256 of the Penal Code, with all of them being sentenced: 1 person was fined, 5 were sentenced to restriction of liberty and 10 to imprisonment.
- Nine persons were put on trial for committing the acts referred to in article 257 of the Penal Code, with six of them being sentenced: one person was fined, one was sentenced to restriction of liberty and four to imprisonment. Proceedings were conditionally dismissed in relation to three persons.

(c) In 2002:

- Seven persons were put on trial for committing the acts referred to in article 256 of the Penal Code, with six persons being sentenced and in relation to one person the proceedings were discontinued conditionally. As regards the persons sentenced, two were fined and four were sentenced to imprisonment.
- Eight persons were put on trial for committing the acts referred to in article 257 of the Penal Code with all of them being sentenced: two persons were sentenced to restriction of liberty and six to imprisonment.



(d) In 2003:

- Seven persons were put on trial for committing the acts referred to in article 256 of the Penal Code, of whom six were sentenced and in one case the proceedings were conditionally discontinued. As regards the persons sentenced, two were fined, one was sentenced to restriction of liberty and three to imprisonment.
- Eleven persons were put on trial for committing the acts referred to in article 257 of the Penal Code, out of whom nine persons were sentenced and in relation to two persons the proceedings were conditionally discontinued. As regards the persons sentenced, three were fined, two were sentenced to restriction of liberty and four to imprisonment.

(e) In 2004:

- Seven persons were put on trial and sentenced for committing the acts referred to in article 256 of the Penal Code. Among them, one was fined, three were sentenced to restriction of liberty and the other three to imprisonment.
- Twelve persons were put on trial for committing the acts referred to in article 257 of the Penal Code, of whom eight were sentenced and in the case of the other four persons the proceedings were conditionally discontinued. As regards the persons sentenced, two of them were fined and six were sentenced to imprisonment.

(f) In 2005:

- Sixteen persons were put on trial and sentenced for committing the acts referred to in article 257 of the Penal Code. Two of them were fined, one was sentenced to restriction of liberty and twelve to imprisonment and with regard to one person an autonomous penal measure was applied.

122. Annex 4 includes statistical data on adults sentenced on indictment by virtue of articles 118, 110, 256 and 257 of the Penal Code in the years 1999-2005 as well as the information obtained from the Police Crime Statistics System “Temida” on the objective scope of reported crimes with distinguished statistical data on the results of proceedings in the years 1999-2005.

123. The Statistics Divisions in the Department for Organization of the Ministry of Justice has prepared statistical cards in order to collect additional detailed information concerning, among others, racial discrimination (specimen report forms “MS-S12 Report on the scope of labour law according to the forms of cases and operational responsibility” and “MS-S28 Statistical card on criminal matters related to trial on indictment of final court decision in 20”, annex No. 5).

124. It is necessary to stress the fact that the data on victims of crime, with relation to signs of all forms of discrimination, can be collected within public statistics on voluntary basis according to article 8 of the Act of 7 April 1989 on Public Statistics (*Journal of Laws* of 1995, No. 88, item 439, as amended) and in compliance with article 27 of the Act of 29 August 1997 on the

Protection of Personal Data (*Journal of Laws* of 2002, No. 101, item 926, as amended), which has already been indicated in the previous report on the implementation of the Convention by Poland. As regards the above-mentioned statistical card “Card MS-S12” (section 9 - Statistical card concerning discrimination in employment), the category “Signs of discrimination in respect of ...” providing for race (as well as religion, nationality, ethnic origin or denomination) has been distinguished in point 6. It is important to stress that the reply will be provided on a voluntary basis.

125. For the needs of statistical information, the categories of compensation cases with relation to sexual abuse and mobbing as well as discrimination in employment that are heard by labour courts have been distinguished. However, the categories of cases on discrimination on account of race have not been detailed, which is why it is hard to say whether the charge of racial discrimination has been put forward in court proceedings. Statistical data reveal that the number of court cases where the charge of discrimination is levelled is successively increasing (although it is minimal in relation to the total number of cases heard by labour courts). At the same time, the analysis of court case files show that the most frequent form of discrimination at work is wage discrimination based on sex.

126. The police have introduced the following items in the subcatalogue “Behaviour of a perpetrator” of the National Information System of the Police:

- The crime is committed with relation to national, ethnic or racial affiliation of a victim
- The crime is committed with relation to the political affiliation of a victim
- The crime is committed with relation to religious affiliation of a victim or lack of any denomination

127. The introduction of such information will make it possible to prepare annual reports on crimes committed on racial grounds and to register all cases of anti-Semitism.

128. Moreover, since November 2004 the Monitoring Team on Racism and Xenophobia at the Ministry of Interior and Administration has been collecting all the information about any cases of discrimination on ethnic and racial grounds, including anti-Semitism (such information comes from several sources, including the press monitoring, information received from other government administration authorities, as well as directly from victims or non-governmental organizations). In order to create a professional database containing information about racism, racial discrimination, anti-Semitism and xenophobia, appropriate works are carried out with the participation of the representatives of the Ministry of Justice, the Ministry of Interior and Administration, the General Headquarters of the Police, the Central Statistical Office and the Commissioner for Civil Rights Protection.

129. In order to monitor crimes committed on racial grounds to the detriment of persons of Roma origin, the General Headquarters of the Police presents the Ministry of Interior and Administration with reports on the above-mentioned cases registered by the police services

all over the country. The explanatory proceedings are initiated on the basis of the said reports and information obtained from the representatives of Roma organizations or victims themselves.

130. According to the recommendation of the National Prosecutor's Office, all preparatory proceedings concerning the acts committed on racial grounds have been subject to the supervision of the district prosecutor's offices since 2004 in order to eliminate the cases of hasty refusals to initiate the proceedings or dismissal of proceedings due to low degree of damage to society. In addition, the appellate prosecutor's offices analyse on a quarterly basis the cases of crimes that ended with a refusal to initiate preparatory proceedings or its dismissal and evaluate the justification of such decisions. Then they submit the information about the results of the analysis and further actions to the National Prosecutor's Office. The evaluation of the information submitted to the National Prosecutor's Office along with comments and observations is distributed to all prosecutors' offices in Poland for further application and in order to harmonize the methodology of preparatory proceedings related to such crimes.

131. The analysis of the results of preparatory proceedings in cases related to racist and xenophobic crimes conducted at the National Prosecutor's Office allows authorities to state that:

- All preparatory proceedings were subject to the official supervision of the superior prosecutor's office.
- All cases concluded with a valid decision about the dismissal of preparatory proceedings or the refusal to initiate the proceedings were analysed at the appeal prosecutor's offices.
- Between 2004 and 2006, no case was dismissed and there was no refusal to initiate the proceedings pursuant to article 17 (1) (3) of the Code of Penal Procedure, i.e. because of the low damage to society.
- The decision on the dismissal of the majority of cases between 2004 and 2006 was due to the failure to detect the perpetrator or perpetrators of crime.
- In other cases that ended with dismissal or refusal to initiate the proceedings, the legal basis for such decisions included the lack of attributes of an offence and the lack of data proving that a crime was committed.
- The number of proceedings related to racist or xenophobic crimes consisting mainly in the publication on different websites of contents inciting to hatred on national, ethnic and religious grounds or insulting for those reasons, is increasing. In 2005, among the total of 43 conducted proceedings, there were 3 that related to the publication of racist contents on the Internet.

132. Examples of proceedings in the cases related to racist and xenophobic crimes:

- On 31 May 2004, an indictment was brought against X for the public promotion of fascist system of State by displaying a red flag with a symbol of swastika on a white circle on the balcony of his flat. The District Court in Tarnobrzeg (magistrate's division), in its judgement of 23 August 2004, sentenced the defendant in the

proceedings for the enforcement of the order on the basis of article 256 of the Penal Code to restriction of liberty for the term of 12 months with a simultaneous obligation to perform unpaid, controlled work for social purposes of 40 hours a month in an undertaking indicated by the court.

- On 26 August 2003, an indictment was brought against X for committing a crime under article 257 of the Penal Code. The defendant insulted an American citizen Y because of her racial affiliation and breached her personal inviolability by striking her on the back and calling her names commonly considered as insulting. In its judgement of 9 August 2004, the District Court for Warszawa Śródmieście found the defendant guilty on the said count and by virtue of article 257 of the Penal Code sentenced him to imprisonment for the term of six months.
- On 10 September 2004, an inquiry was launched with relation to the case on insulting a group within the population because of their national and religious affiliation, i.e. for committing a crime specified in article 257 of the Penal Code. The crime was notified by X who reported that a group of his neighbours had been insulting the Jewish, Ukrainian and German nations as well as himself by calling him names such as “German Jew”, “German-Jewish mixture” and “German scab”. The circumstances reported by X were not however confirmed in the evidence and the testimony of witnesses showed that X was a conflicting person who had been provoking feud among neighbours, as a result of which letters were addressed to law enforcement agencies. A legally valid decision on dismissing the inquiry due to the lack of data proving that the crime was really committed (article 17 (1) (1) of the Code of Penal Procedure) has been considered as legitimate.
- Several times the District Police Headquarters seated in the town of X received by e-mail notifications of the promotion of the neo-fascist ideology in town by the activists of the radical national movement, i.e. of committing the act defined in article 256 of the Penal Code. In the ruling of 28 April 2005 the decision was made on the refusal to launch an inquiry since on the basis of the collected material such as pamphlets or leaflets it was concluded that the activity of the said organization did not include elements promoting fascism or inciting to hatred based on national, ethnic, racial differences. After the analysis of the files in the appellate prosecutors’ office, it was found that the decision had been right.

### Article 5

133. The following legal acts regulate the access to courts and other judicial authorities:

- (a) The Constitution of the Republic of Poland of 2 April 1997 (*Journal of Laws* of 1997, No. 78, item 483, as amended);
- (b) The Code of Civil Procedure of 17 November 1964 (*Journal of Laws* of 1964, No. 43, item 296, as amended);
- (c) The Code of Penal Procedure of 6 June 1997 (*Journal of Laws* of 1997, No. 89, item 555, as amended);

- (d) The Fiscal Penal Code of 10 September 1999 (*Journal of Laws* of 1999, No. 83, item 930, as amended);
- (e) The Petty Offences' Proceedings Code of 24 August 2001 (*Journal of Laws* of 2001, No. 106, item 1148, as amended);
- (f) The Labour Code of 26 June 1974 (*Journal of Laws* of 1998, No. 21, item 94, as amended);
- (g) The Act of 26 October 1982 on Juvenile Proceedings (*Journal of Laws* of 2002, No. 11, item 109, as amended);
- (h) The Code of Administrative Procedure of 14 June 1960 (*Journal of Laws* of 2000, No. 98, item 1071, as amended);
- (i) The Act of 25 July 2002 on Constitution of Administrative Courts (*Journal of Laws* of 2002, No. 153, item 1269, as amended);
- (j) The Act of 30 August 2002 on Proceedings before the Administrative Courts (*Journal of Laws* of 2002, No. 153, item 1270, as amended);
- (k) The Act of 25 July 2002 on Constitution of Common Courts (*Journal of Laws* of 2001, No. 98, item 1070, as amended);
- (l) The Act of 23 November 2002 on the Supreme Court (*Journal of Laws* of 2002, No. 240, item 2052, as amended);
- (m) The Act of 1 August 1997 on the Constitutional Tribunal (*Journal of Laws* of 1997, No. 102, item 643, as amended);
- (n) The Act of 15 July 1987 on the Commissioner for Civil Rights Protection (*Journal of Laws* of 2001, No. 14, item 147, as amended).

134. None of the above-mentioned legal acts forms a basis for discrimination against persons on account of race, colour, or national or ethnic origin. All the legal acts must comply with the Constitution, including its article 32.

135. Article 5 (2) of the Act on Constitution of Common Courts provides that “any person with insufficient command of Polish language has the right to testify before the court in a language known to him and to use, free of charge, the services of an interpreter”. Similarly, article 72 of the Code of Penal Procedure stipulates that the accused who does not have a command of the Polish language has the right to use, free of charge, the services of an interpreter and that the order on the presentation, supplementation or alteration of charges, the indictment or a decision subject to review, or a decision concluding the proceedings is served on the accused with a translation; if the accused consents, the decision concluding the proceedings may only be announced to him, providing it is not subject to review.

136. Moreover, according to article 204 of the Code of Penal Procedure, “an interpreter shall be summoned whenever it is necessary to examine a deaf or dumb person with whom attempts at communication in writing have not sufficed or a person without a command of the Polish language. An interpreter shall also be summoned whenever it is necessary to translate into the Polish language a document written in a foreign language, or to translate a Polish document into a foreign language or to acquaint the accused with the contents of the evidence examined”.

137. As regards the penal proceedings, there is also a possibility (article 78 of the Code of Penal Procedure) for the accused who does not have a defence lawyer to ask for a court-appointed defence lawyer providing that the accused proves that he cannot afford to pay the defence costs without damage to his own well-being and the well-being of his family. The civil law also allows for such a possibility in that the party fully or partly exempted by the court from paying court fees has the right to submit in writing or orally a proposal to the protocol to have a lawyer or legal adviser appointed (article 117 (1) of the Act - Code of Civil Procedure of 17 November 1964 (*Journal of Laws* of 1964, No. 43, item 296, as amended)). The above-mentioned law on assistance is also regulated by articles 243-244 of the Act on Proceedings before the Administrative Courts (*Journal of Laws* of 2002, No. 153, item 1270, as amended). The issue of exemption from court fees is governed by the Act on Civil Court Fees of 28 July 2005 (*Journal of Laws* of 2005, No. 167, item 1398, as amended).

#### **A. The right to security**

138. The use of violence and infliction of injury as well as the infringement of personal inviolability are considered as offences and thus are prohibited under the Penal Code. The Act of 6 April 1990 on the Police (*Journal of Laws* of 2002, No. 7, item 58, as amended) and the Act of 24 May 2002 on Internal Security Agency and Foreign Intelligence Agency (*Journal of Laws* of 2002, No. 74, item 676, as amended) provide that the officer, irrespective of criminal liability, bears disciplinary liability for the crimes and offences committed. Furthermore, the personal interests of a human being, such as health, freedom, dignity, secrecy of correspondence or inviolability of home are protected by civil law (articles 23-24 of the Civil Code).

139. According to the provisions of the Civil Code (arts. 417-417<sup>2</sup>) the Treasury bears responsibility for the damage inflicted as a result of illegal acts or omissions in the exercise of State authority.

#### **B. Voting rights**

140. At present, in connection with adjusting Polish election law to the requirements of European Union legislation, a possibility of granting some electoral rights to citizens of the European Union permanently residing in Poland is being considered. According to the Constitution, a Polish citizen has the right to participate in a referendum and the right to elect the President of the Republic of Poland, deputies, senators and representatives of local self-government bodies if, no later than on the day of the vote, he has attained 18 years of age, and has not been subject to legal incapacitation or deprived of public or electoral rights by a final judgement of a court. In accordance with the amendment to the Executive Penal Code, which entered into life on 1 September 2003, restriction of the civil rights and freedoms of convicted persons can only arise from a law and from a valid ruling issued on its basis.

141. In the period from the previous report, changes have been made in legal acts regulating elections to representative organs and in the principles according to which a nationwide and a local referendum is conducted. Apart from the basic regulations contained in the Constitution, detailed norms within this scope are included in the following acts:

- Act on the Election of the President of the Republic of Poland of 27 September 1990 (*Journal of Laws* of 2000, No. 47, item 544, as amended): the election is equal, direct, conducted by secret ballot, and universal. Each Polish citizen who no later than on the day of the vote has attained 18 years of age, unless deprived of public rights by a final judgement of a court, the Tribunal of the State or is legally incapacitated has the right to vote in the election.
- The Act on the Election to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland of 12 April 2001 (*Journal of Laws* of 2001, No. 46, item 499, as amended): elections to the Sejm numbering 460 deputies elected in multimandate constituencies are universal, equal, direct, proportional and conducted by secret ballot, while elections to the Senate with 100 senators are conducted according to the majority principle, and are universal, direct and conducted by secret ballot.
- The Act on the Election to Municipality and District Councils and Voivodeship Assemblies of 16 July 1998 (*Journal of Laws* of 1998, No. 95, item 602, as amended): elections are conducted by secret ballot, universal (the right to elect for the given council is granted to each Polish citizen, who no later than on the day of the vote has attained 18 years of age and permanently resides in the area of this council), direct and equal.
- The Act on the Direct Election of Municipality Heads, Town and City Mayors of 20 June 2002 (*Journal of Laws* of 2002, No. 113, item 984, as amended): elections are equal, universal (the right to elect is granted to everyone who has the right to elect for the municipality council), direct and conducted by secret ballot.
- The Act on a Local Referendum of 15 September 2000 (*Journal of Laws* of 2000, No. 88, item 985, as amended): persons permanently residing in the area of a given unit of the local self-government with the right to elect to the legislative organ of this unit, express through the vote their will as to the method of resolving an issue related to this community, which is within the scope of tasks and competences of bodies of a given unit or in dismissing a legislative body of this unit, and in the case of a municipality also of dismissing a municipality head (town or city mayor).
- The Act on a Nationwide Referendum of 14 March 2003 (*Journal of Laws* of 2003, No. 57, item 507, as amended).

142. Polish citizens who belong to national minorities shall participate under general principles in the election of the President of the Republic of Poland, in the election to the Sejm and the Senate of the Republic of Poland, in the elections to municipality and district councils and Voivodeship assemblies, as well as in direct elections of commune heads and town and city mayors. This applies also to the participation in a nationwide referendum and in local referendums. During the election to the Sejm, upon a motion by the electoral committee

established by voters associated in registered organizations of national minorities, the electoral committee reporting to the State Electoral Commission is granted a preferential waiver of the requirement to reach at least a 5 per cent threshold of valid votes cast in the country in order for its lists of candidates in districts to participate in the division of mandates. Taking advantage of this preference, the German minority obtained two deputy mandates in the election of 2001. Registered organizations of national minorities in the procedure of elections to legislative and executive bodies of units of local self-government, like all associations of another character, may submit lists of candidates for councillors and candidates for commune heads and town and city mayors. Statutory bodies authorized to represent those organizations outside may fulfil the function of electoral committees if they notify about this intention to the State Electoral Commission or the relevant electoral commissioner (if the participation in elections is to comprise a territory of at least two Voivodeships).

143. Similarly, organizations of national minorities of a nationwide scope may be authorized to participate in a nationwide referendum, if they fulfil the requirements related to associations and social organizations defined in the Act on the Nationwide Referendum.

### **C. Access to the public service**

144. Under the Constitution, Polish citizens enjoying full public rights have the right of access to the public service based on the principle of equality. Under the Act of 18 December 1998 on the Civil Service (*Journal of Laws* of 1999, No. 49, item 483, as amended) everyone who fulfils necessary requirements, i.e. is a Polish citizen, enjoys full public rights, has not been penalized for an intentionally committed offence, possesses qualifications required in the civil service, enjoys a spotless reputation and has qualifications necessary for work at a given position, may be employed in the civil service.

### **D. Right to free movement**

145. As of 1 September 2003, the principles and conditions of foreigners' entry into the territory of Poland (including, for example, the principles and conditions of issuing visas to foreigners entitling them to cross the border of Poland), transit through this territory, stay and departure from Poland as well as the course of action and bodies competent in those matters have been defined in the Act of 13 June 2003 on Foreigners (*Journal of Laws* of 2006, No. 234, item 1694, as amended), which replaced the existing Act of 25 June 1997 on Foreigners. An idea was adopted to set apart regulations concerning those persons who require special treatment, defined primarily in norms of international law, from the Act which applies to all foreigners.

146. The Act on Foreigners provides for the institution of family reunification, introduced into the Polish legislation already in 2001, according to which the residence permit for a fixed period shall be granted to a foreigner for the purpose of family reunification. According to the initial version of the Act, the above-mentioned residence permit for a fixed period for the purpose of family reunification was granted to a foreigner who resided outside the territory of the Republic of Poland and was a member of the family of a foreigner, who resided on the territory of Poland on the basis of the permit to settle, the residence permit for a fixed period of at least three years, or on the basis of the refugee status.



147. As a result of the amendment of 1 October 2005 to the Act on Foreigners:

(a) Residence permits for a fixed period for the purpose of family reunification are granted both to members of a family of a foreigner who reside in the territory of the Republic of Poland and to family members already residing there for the purpose of family reunification;

(b) A foreigner who can be joined by his family members within the scope of family reunification is also a foreigner who resides on the territory of the Republic of Poland on the basis of the residence permit for long-term European Union residents (a new form of residence permit granted for an indefinite period of time in EU member States);

(c) As regards a foreigner who can be joined by his family members within the scope of family reunification, the requirement of residing on the basis of the residence permit for a fixed period of at least three years has been cut to two years, before submitting an application for a permit to settle for a fixed period for a family member - on the basis of the permit to settle issued for the period of no less than one year. According to the Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland, a foreigner meeting proper criteria may be granted protection on the territory of the Republic of Poland in the form of the refugee status, asylum, a permit for tolerated stay or temporary protection. All proceedings in the matters regulated by this Act are carried out according to the provisions of the Code of Administrative Procedure unless the Act states otherwise.

148. Family reunification applies to the spouses and minor children (including adopted children) of the applicant or his spouse; family member of a minor foreigner with refugee status staying in the territory of the Republic of Poland is also his direct ascendant.

149. A uniform asylum procedure is applied in the Republic of Poland. In the course of proceedings for granting refugee status, the competent authorities not only verify if a foreigner fulfils the conditions for being recognized as a refugee but also check other circumstances resulting in the protection against expulsion if the said conditions are not met. It is particularly important to underline here the standards of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (*Journal of Laws* of 1993, No. 61, item 284, as amended). A foreigner who does not meet the criteria to be recognized as a refugee but who should be protected against expulsion is granted protection in the form of the permit for tolerated stay. If a foreigner, on the basis of a submitted application, cannot be granted either the refugee status or the permit for tolerated stay, he will be obliged to leave the territory of the Republic of Poland except for the situations provided for in article 16 (3) of the Act. Therefore, a legal situation of a foreigner is settled in the course of one proceeding held by one administrative body.

150. Poland also applies the “non refoulement” principle. Persons applying for refugee status are protected against expulsion in the course of proceedings. If the proceedings end before the body of first instance with the decision on the refusal to grant the refugee status, which also includes the order to leave the territory of the Republic of Poland, filing an appeal against such a decision at the Refugee Centre stops the execution of the decision.

151. A foreigner who stays on the territory of the Republic of Poland may be expelled only in situations defined in the Act on Foreigners, namely if:

(a) He resides on the territory of the Republic of Poland without the required visa, the residence permit for a fixed period, the permit to settle or the residence permit for long-term European country residents;

(b) He carried out work contrary to the Act of 20 April 2004 on Employment and Combating Unemployment or if he took up another economic activity contrary to the acts effective in the Republic of Poland;

(c) He does not possess the financial means necessary to cover the costs of residence in the territory of the Republic of Poland and is not able to indicate any credible sources of obtaining those means;

(d) His data is recorded in the register of foreigners whose residence on the territory of the Republic of Poland is undesirable, if a foreigner's entry into this territory takes place within the period of validity of the record;

(e) His further stay in the country would not pose a threat to the State security, defence and public order or would be in breach of the interests of the Republic of Poland;

(f) He has crossed or has attempted to cross the border contrary to the law;

(g) He did not voluntarily leave the territory of the Republic of Poland within the time limit specified in the decision:

- On obligation to leave this territory
- On refusal to grant the residence permit for a fixed period
- On withdrawal of the residence permit for a fixed period

(h) He does not comply with fiscal obligations towards the State Treasury;

(i) He has completed a sentence of imprisonment adjudicated in the Republic of Poland for committing an intentional crime or a financial crime;

(j) He has been sentenced by a final judgement of a court in the Republic of Poland to imprisonment and there are grounds for initiating proceedings on his transfer to a foreign country where he will serve the sentence.

152. In contrast to the regulations previously in force, the decision on expulsion is not issued with respect to a foreigner who has the permit to settle or the residence permit for long-term European residents. On 1 October 2005, this also started applying to a foreigner who has the residence permit for long-term European residents. In addition, the decision on expulsion is not issued and the decision already issued is not implemented if:

- There are circumstances that warrant the issue of a permit for tolerated stay

- A foreigner is married to a Polish citizen or to a foreigner who has the permit to settle or the residence permit for long-term European residents and his further stay in the country does not pose a threat to the State security, defence and the public order unless he has entered into marriage in order to avoid the expulsion
- The proceedings for granting the refugee status have been initiated

153. As regards the right to inheritance, the only restriction applying to it results from article 1059 of the Civil Code, which makes inheritance of an agricultural holding conditional on fulfilling one of the following requirements at the moment of opening of the succession:

- “(1) inheritors are still directly working at agricultural production or
- (2) inheritors possess adequate occupational skills and competence to deal with agricultural production or
- (3) inheritors are minors, they learn the profession, attend schools or
- (4) inheritors are permanently unfit for work.”

The Constitutional Tribunal, in its judgement of 31 January 2001 (*Journal of Laws* of 2002, No. 11, item 91), ruled that the above-mentioned article was not in keeping with article 64 (1) and (2) (equality as regards the right to ownership) in conjunction with article 21 (1) (protection of ownership and the right of succession) and article 31 (3) (the scope of exercise of constitutional freedoms and rights) of the Constitution of the Republic of Poland to the extent in which it has applied to open succession since 14 February 2001. This means that open succession after this date is not subject to the said restriction.

#### **E. Freedom of thought, conscience and faith**

154. Article 53 (1) of the Constitution of the Republic of Poland stipulates that freedom of conscience and religion are ensured to everyone. The right to freedom of religion is vested in the persons staying in the territory covered by the Polish law irrespective of their citizenship. According to the Constitution and the provisions of the Act of 17 May 1989 on Guarantees of the Freedom of Conscience and Faith (*Journal of Laws* of 2005, No. 231, item 1965, as amended), the freedom of religion includes in particular:

- The freedom to profess or to accept a religion by personal choice.
- The freedom to manifest one's religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing rites or teaching.
- The possession of sanctuaries and other places of worship for the satisfaction of the needs of believers.
- The right of individuals, wherever they may be, to benefit from religious services.

- The right of parents to ensure children a moral and religious upbringing and teaching in accordance with their convictions. The moral and religious upbringing should, however, allow for the degree of maturity of the child as well as the freedom of thought and conscience and beliefs of the child.
- The freedom to establish religious congregations and communities for the purpose of practising and propagating religious faith.
- The freedom to belong or not to belong to religious communities.
- The right to keep silent on the matters related to religion or beliefs.

155. According to article 6 of the above-mentioned Act, nobody can be discriminated against or privileged on grounds of religion or religious beliefs. In addition, citizens may not be forcibly prohibited from participating in religious practices or rites or forced to take part in them. It is important to stress the fact that foreigners staying on the territory of the Republic of Poland may enjoy the freedom of conscience and faith equally with Polish citizens.

156. The effective legal articles provide for the following forms and standards regulating a legal status of churches and other religious associations:

- (a) International agreement;
- (b) Acts regulating the relations of the State with particular churches and religious associations;
- (c) Entry into the Register of Churches and Other Religious Associations on the basis of the Act on Guarantees of the Freedom of Conscience and Faith.

157. It is important to underline the fact that in compliance with Polish law, the diversification of the forms of regulations governing a legal and financial situation of churches and other religious associations does not affect their equal rights.

158. As of 31 July 2005, 159 churches and other religious associations had legal personality and established relations with the State:

- (a) The Catholic Church in the Republic of Poland - on the basis of the international agreement - concordat between the Vatican and the Republic of Poland signed in Warsaw on 28 July 1993 (*Journal of Laws* of 1998, No. 51, item 318) and of the Act on the Relation of the State to the Catholic Church in the Republic of Poland (*Journal of Laws* No. 29, item 154, as amended);
- (b) Fourteen other churches and religious associations operating on the basis of separate acts regulating their relations with the State. These particular acts are legal equivalents of the above-cited Act on the Relation of the State to the Catholic Church in the Republic of Poland;

(c) One hundred and forty-seven churches and religious associations entered into the Register of Churches and Other Religious Associations on the basis of the Act of 17 May 1989 on Guarantees of the Freedom of Conscience and Faith. Over the last years, two religious communities were entered in the Register in 2000, also two - in 2001, four - in 2003 and three - in 2004.

159. According to the Act on Guarantees of the Freedom of Conscience and Faith, on grounds of their religious beliefs and moral principles, citizens may apply to be delegated to provide substitute military service. A serviceman who has been refused to be delegated to provide substitute military service has the right to lodge a complaint to an administrative court.

160. The above-mentioned Act also grants the right to enjoy the freedom of conscience and faith as well as the right to own and use objects necessary for religious worship and performance of religious practices to persons doing their military service or conscript military service in civil defence forces, staying in penal institutions, correctional institutions and educational institutions, as well as in custody pending inquiry, social adaptation centres and care centres for minors, to persons held under temporary arrest as well as to persons staying in health-care institutions and social care institutions and children and youth staying in domestic camps organized by State institutions.

161. Persons belonging to churches and other religious associations whose religious holidays are not public holidays, may, at their own request, be granted days off from work or school for the period of celebration of such holidays, in accordance with the requirements of their religion. Days off from work or school may be granted provided the time of absence is made up for without additional compensation for work on public holidays or in overtime hours.

162. As regards the remaining scope concerning civil rights, the information presented in the previous report is still valid. Detailed information on the exercise of civil and political rights, including the rights of persons belonging to national and ethnic minorities, has been presented in the fifth periodic report of Poland on the implementation of the provisions of the International Covenant on Civil and Political Rights covering the period from January 1995 until 1 October 2003 and in the course of its presentation before an appropriate Committee.

163. In Poland, the exercise of the rights referred to in article 5 (e) of the Convention is not, under any circumstances, diversified on account of race, nationality or religion.

#### **F. The rights to work and to free choice of employment**

164. Article 65 of the Constitution provides that everyone has the freedom to choose and to pursue his occupation and to choose his place of work and that exceptions are specified by statute. Article 66, on the other hand, stipulates that everyone has the right to safe and hygienic conditions of work. These regulations are specified in the Act of 26 June 1974 - the Labour Code (*Journal of Laws* of 1998, No. 21, item 94, as amended), which stipulates that everyone shall have the right to freely chosen employment (art. 10) and that employees have equal rights resulting from the performance of identical duties, which applies in particular to the equal treatment of men and women in employment (art. 11) and that any discrimination, direct or

indirect, in employment relations, in particular on grounds of sex, age, disability, race, religion, political views, union membership, ethnic origin, religious convictions, sexual orientation or due to employment for a definite or an indefinite period, or on a full-time or part-time basis, is inadmissible (art. 11).

165. On 1 January 2004, another amendment to the provisions was made and the effective regulations concerning the prohibition of discrimination were detailed. On the basis of the Act of 24 August 2001 on the Change of Act - the Labour Code and Some Other Acts (*Journal of Laws* No. 213, item 2081), Chapter "II a" in the first section of the Labour Code has been changed and entitled "Equal treatment in employment" instead of "Equal treatment of men and women".

166. According to article 11 of the Labour Code "Any discrimination, direct or indirect, in employment, particularly in respect of sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, denomination, sexual orientation or due to employment for a definite or an indefinite period, or on a full-time or part-time basis, shall be inadmissible."

167. Article 18(1) of the Labour Code stipulates that employees should be treated equally as regards the establishment and termination of employment relationships, conditions of employment, promotion and access to training in order to raise occupational qualifications, particularly regardless of sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, denomination, sexual orientation or due to employment for a definite or an indefinite period or on a full-time or part-time basis.

168. In compliance with article 18 (2)-(4), direct discrimination exists when an employee, due to one or several reasons provided in paragraph 1, has been or could be treated in any comparable conditions less favourably than other employees. Indirect discrimination, on the other hand, refers to a situation where, due to a seemingly neutral decision, applied criterion or undertaken action, there are disproportions as regards the scope of employment conditions to the detriment of all or a significant number of employees who belong to a group distinguished on the basis of one or several reasons defined in paragraph 1, provided that such disproportions cannot be justified by any other objective reasons.

169. Article 11 of the Labour Code places discrimination on account of sex on the first place. This concept also covers cases of sexual harassment, which results from the implementation of the EU provisions. One of the reasons for the reform of the EU anti-discrimination law was the conversion of the concepts of "harassment in respect of (...) sex, age, race, ethnic origin, religion, beliefs, age, disability, sexual orientation" and "sexual harassment" into legal categories.

170. The question of discrimination in employment refers to the problem of mobbing at work. Therefore, on 1 January 2004 by way of the Act of 14 November 2003 on the change of Act - the Labour Code and Some Other Acts (*Journal of Laws* No. 213, item 2081), a legal definition of mobbing together with the employee's right to compensation was introduced in the Labour Code.

171. According to article 94 (2) of the Labour Code, “mobbing means any actions or behaviour related to an employee or directed against an employee, consisting in persistent and long-lasting harassment or intimidation of an employee and resulting in decreased evaluation of his professional capabilities, as well as leading to or aimed at humiliating or ridiculing an employee, isolating him or eliminating him from a work team”. If all of these assumptions are facts and negative behaviours keep recurring for a longer period of time, such actions of the employer can be qualified as mobbing. The risk of mobbing is increasing with the rise in the unemployment rate and people’s readiness to keep a job at any price. This is why an employer is obliged to counteract mobbing (article 94 (1) of the Labour Code).

172. As far as access to employment is concerned, there is a certain differentiation on account of citizenship. There is a general principle in Polish law which obliges a foreigner wishing to take up employment to receive a work permit on the conditions defined in the Act of 20 April 2004 on the Promotion of Employment and Labour Market Institutions (*Journal of Laws* No. 99, item 1001, as amended) and in the implementing acts. According to the said Act, the authority issuing a work permit, i.e. the voivode competent for the seat of an employer, is obliged to take into consideration the situation on a local labour market as well as the criteria for issuing such permits developed by the authorities at the Voivodeship level for particular regions of the country. In certain circumstances, the regulations provide for the possibility of issuing such permits under simplified principles without the obligation to analyse the situation on the labour market.

173. There are some categories of foreigners who have a statutory right to take up employment in Poland without the necessity to possess a work permit. These include, in particular:

- Persons who were granted the refugee status in Poland
- Persons who were granted the permit to settle in Poland (permanent residence)
- Persons who received the permit for tolerated stay
- Persons who were granted temporary protection
- Persons who were granted the freedom to take up employment under the European Union regulations

174. Furthermore, the Minister of Labour and Social Policy has the right to determine other cases where it is possible for a foreigner to take up employment without the necessity to receive a work permit.

175. During their stay in Poland, the foreigners allowed on the labour market are subject to Polish legislation. They have the same rights and obligations as local employees as regards the conditions of work, remuneration and the protection of employees’ rights.

**Table 2****Number of work permits granted to foreigners in the years 2000-2005**

	2000	2001	2002	2003	2004	2005
Employment by Polish employers	17 802	17 038	22 776	18 841	12 381	10 304
Delegation within the provision of services	1 860	2 755	995	990	798	847

176. Foreigners taking up employment in Poland come from approximately 100 countries. Europeans, who receive 60 per cent of all work permits, are the most highly represented group followed by Asians with 35 per cent of the total number of issued work permits. These proportions have not significantly changed for the last few years.

**G. The right for protection against unemployment**

177. Article 65 (5) of the Constitution provides that public authorities pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention. Moreover, the Constitution imposes on public authorities an obligation to actively combat unemployment, which however does not mean that the authorities are obliged to ensure employment to each unemployed person. The above-mentioned issue is similarly regulated by the International Labour Organization Convention No. 122 on Employment Policy (Geneva 1964), which was ratified by Poland.

178. Social security for unemployed citizens is provided in the forms of social shelter defined in the Act on the Promotion of Employment and Labour Market Institutions, e.g. unemployment benefits, contributions to sickness insurance funds and in the Act of 12 March 2004 on Social Assistance (*Journal of Laws* No. 64, item 593, as amended) e.g. temporary unemployment benefits, special or guaranteed benefits. The right to receive the above-mentioned benefits depends on the level of family income.

179. The tasks of the State within the scope of labour market policy, reduction of unemployment and professional stimulation are performed by the minister competent for labour-related matters, Voivodeship labour offices acting as organizational units of Voivodeship self-government and by county labour offices included in the combined county administration. They cooperate with organizations and institutions which deal with problems related to employment, trade unions and organizations of employers and the unemployed. The tasks of the State are implemented on the basis of the National Action Plan for Employment, which includes the principles related to the implementation of the European Employment Strategy.

180. The basic form of counteracting unemployment is the use of employment intermediaries provided by county labour offices. Employment intermediaries aim at helping persons looking for a job to find employment and at assisting employers in finding a right employee without



discrimination on account of race, nationality and ethnic origin. Their services are free of charge. The prohibition of any discrimination is clearly emphasized in the Act of 1 April 2004 on the Promotion of Employment and Labour Market, particularly in:

- Article 18a (4), which imposes on employment agencies a prohibition of discrimination on grounds of sex, age, disability, race, ethnic origin, nationality, sexual orientation, political views, religious beliefs and trade union membership in relation to the persons for whom employment agencies seek employment
- Article 36 on employment intermediaries, which stipulates in paragraph 4 that the employment agencies shall conduct their activity free of charge according to the following principles:
  - The access to the services provided by employment intermediaries for all the persons looking for employment as well as for employers
  - The equality principle, which means that county labour offices are obliged to provide support to all job seekers, regardless of their sex, age, disability, race, ethnic origin, nationality, sexual orientation, political views, faith and union membership

181. Paragraph 5 of the article states that all employers should inform county labour offices of available jobs or vocational training posts and which prohibits them from formulating requirements that discriminate candidates on grounds of sex, age, disability, race, ethnic origin, nationality, sexual orientation, political views, faith and union membership.

- Article 38 on vocational counselling, which in paragraphs 2 and 3 states that vocational counselling should be conducted by the county labour offices according to the principles of, inter alia, equality of access to vocational counselling, regardless of the person's sex, age, disability, race, ethnic origin, nationality, sexual orientation, political views, faith and union membership.
- Article 123, which provides for a standard according to which whoever refuses to employ a candidate to fill a job vacancy or a vocational vacancy on the grounds of sex, age, disability, race, ethnic origin, nationality, sexual orientation, political views, faith and union membership shall be liable to a fine of at least 3,000 PLN. Therefore, violation of the prohibition of discrimination is liable to a specific penalty. At the same time, article 49 of the above-mentioned Act provides for the implementation of additional, special measures defined in articles 50-61 of the said Act with relation to the unemployed up to 25 years of age, permanently unemployed, unemployed over 50 years of age, unemployed without professional qualifications, unemployed raising on their own at least one child up to 7 years of age, disabled unemployed referred to as the "persons in a special situation on the labour market", which is in keeping with Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303 of 2 December 2000).

182. A difficult situation on the labour market requires adjusting continuously to the changing requirements on the labour market. There are different types of courses and trainings, in which very often women take an active part. These women, upon receiving appropriate qualifications, take up employment in compliance with their new qualifications. Women constitute also a large group of beneficiaries of programmes aimed at reducing unemployment and supporting employment. There has been a decrease in the number of women among the unemployed undergoing training in the last years. In 2005, women constituted 47 per cent of the graduates of training intended for the unemployed.

183. At the end of 2000, the number of the unemployed amounted to 2,702,600 and the unemployment rate was 15.1 per cent. Upward trends as regards the unemployment in two following years were such that at the end of 2002, the number of unemployed persons registered in labour offices amounted to 3,217,000 and the unemployment rate was 20 per cent. Nevertheless, since 2003 there have been positive changes on the labour market accompanied by an economic boom (which was reflected, among others, in an increase in the pro-investment orientation among enterprises, export growth and a possibility of free movement of employees after the accession to the European Union). In 2003 and 2004, the number of the unemployed decreased by 41,300 and 176,100 respectively and the unemployment rate dropped to 19 per cent. Downward trends were observed again in 2005: in July unemployment decreased to 2,809,000 and the unemployment rate amounted to 17.9 per cent.

184. In spite of downward trends as regards both the level and the concentration of unemployment, one can still observe its spatial differentiation, resulting first of all from an uneven socio-economic development of the regions (the highest unemployment applies to northern and north-eastern Poland and the lowest is to be observed in large agglomerations). Permanent unemployment features include a high unemployment rate among women (53.9 per cent), young people between 18 and 24 years old (23 per cent), persons with low (below average) education level (65.5 per cent) and among persons who have been unemployed for over one year (52.8 per cent).

185. As regards the right to fair and satisfying conditions of work and the right to establish trade unions, the information presented in the previous report remains valid.

#### **H. The right to a home**

186. Public authorities pursue policies conducive to satisfying the housing needs of citizens, which is reflected, inter alia, in the implementation of specific programmes. Due to the fact that homelessness, its complex reasons and particularly severe social and economic results are social problems with national range and significance, the nationwide programme called *Powrót osób bezdomnych do społeczności* (Inclusion of the homeless in society). The programme is aimed at more effective use of existing organizational and economic possibilities, used for years to the benefit of the homeless in such institutions as, inter alia, night shelters, hostels, homes for the homeless, homes for single mothers, food banks, vocational workshops (e.g. on the pattern of

Kofoed schools), hostels for victims of violence and persons in the situation of crisis, protected flats, flats for the purpose of readaptation as well as institutions of emergency institutions, such as: heating rooms, eating houses, kitchens for the poor, posts of medical and material assistance, dispensaries, day-care houses, day-care rooms, points of legal, psychological and family counselling and others.

187. The programme does not have a determined period of implementation. The programme is implemented in two directions - regionally (Voivodeships) and centrally (additional support for municipal self-governments and NGOs). The minister competent for social security annually determines the amount of funds for implementation of the programme tasks under the amounts determined in the budgetary law in the social security part. The programme is implemented in the form of commissioning tasks to eligible subjects which operate in the field of social assistance and integration, and particularly:

- NGOs carrying out activities in the scope of social assistance
- Legal persons and organizational units acting on the basis of the regulations concerning the attitude of the State to the Catholic Church in the Republic of Poland, the attitude of the State to other churches and religious associations as well as the regulations concerning the guarantees of the freedom of conscience and religion, if their statutory goals include carrying out activities in the scope of social assistance referred to in articles 1 and 2 of the Act of 12 March 2004 on Social Assistance

188. The most important thematic blocks of this programme include:

(a) Measures to prevent the phenomenon of homelessness from becoming established and broadening (taking into account necessary professional identification of the problem and analysis of social threats accompanying homelessness in the local environment), e.g.:

- Distinguishing individuals and social groups whose social and economic situation requires taking preventive actions towards them
- Identifying the sources of critical situations in life, determining the degree of threat of homelessness and distinguishing groups of persons actively cooperating for overcoming the above-mentioned problems
- Developing models (standards) of individual programmes of exiting and preventing homelessness as well as promoting programme concepts in the scope of “assistance for mutual assistance”
- Supporting the institution of civil counselling and advocacy, providing persons under threat of homelessness with assistance in the scope of access to public services and protection of their interests
- Information and publishing activity in the form of guides, newsletters and leaflets containing information on possibilities of obtaining assistance and its types as well as the addresses of institutions, night shelters, support centres, etc.

- Promoting and organizing neighbourly help, involving civil groups into looking for missing persons or persons who lost contact with their families and the local environment

(b) Protective measures preventing biological and social degradation of the homeless with the use of standard types and forms of benefits under social assistance. Protective measures are implemented with the use of available means and basic elements of social work. It constitutes the first stage of the social and economic process of becoming independent and integration of the homeless or persons under threat of homelessness. It particularly includes:

- Securing accommodation, food, hygiene products and clothing
- Giving medical assistance and first aid
- Helping in obtaining social security benefits, including social assistance as well as invalidity and old-age pensions
- Helping in obtaining or reconstructing personal documents

(c) Stimulating measures aiming at exiting homelessness through:

- Development and implementation of system solutions as an integral part of appropriately worked and carried out homelessness prevention, addressed to correctly identified persons and social groups
- Measures appropriate to the type of homelessness suffered by an identified person or social group, own funds of the subject implementing the task and the development level of: the local community, the economy, public services, the labour market

189. Since 2003, on the basis of the Act of 13 June 2003 on Social Employment (*Journal of Laws* No. 122, item 1143, as amended) actions are taken to support persons at risk of social exclusion, including long-term unemployment threatening also the upkeep of flats. This Act allowed use of a legal economic tool, namely the individual programme of social employment. It is implemented by institutions such as centres and clubs for social integration; currently there are 50 and 250 such institutions, respectively. Services of social and professional reintegration for persons at risk of social exclusion provide them with financial assistance, which protects them economically from the loss of a flat in the absence of means to pay the rent.

190. Through the implementation of the programme called *Aktywne Formy Przeciwdziałania Wykluczeniu Społecznemu* (Active Forms of Counteracting Social Exclusion), The Ministry of Labour and Social Policy provides all subjects implementing tasks in the area of social employment with additional support for creating new institutions: centres and clubs for social integration.

191. In other respects the information presented in the previous report remains valid.

### **I. Right to health care, right to social insurance and social benefits**

192. According to article 67 of the Constitution, a citizen has the right to social security whenever incapacitated for work by reason of sickness or invalidity as well as on reaching retirement age or when a citizen is involuntarily without work and has no other means of support. The scope and forms of social security is specified by statute.

193. Article 68 of the Constitution provides that everyone has the right to have his health protected, and that equal access to health-care services, financed from public funds, is ensured by public authorities to citizens, irrespective of their material situation. Moreover, the public authorities ensure special health care to children, pregnant women, handicapped people and persons of advanced age.

194. On 1 October 2004, the Act of 27 August 2004 on Health Care Benefits Financed from Public Funds (*Journal of Laws* of 2004, No. 210, item 2135, as amended) came into force. It established the right of persons covered by general health insurance and certain other persons to benefit from health-care services financed from public funds. This right is fulfilled by the health insurance institution - the National Health Fund (Narodowy Fundusz Zdrowia). This Act adapts the Polish health insurance scheme to the rules of the Community coordination of social security and determines the objective scope of available benefits as well as the subjective scope of being subject to compulsory insurance and the principles of voluntary health insurance. This insurance excludes, with certain exceptions, foreigners, unless international agreements provide otherwise. According to the above-mentioned Act, rights to health-care services were extended to persons who are not covered by health insurance, have Polish citizenship, reside in the territory of the Republic of Poland and meet the requirements concerning income criteria determined in the Act of 12 March 2004 on Social Assistance (*Journal of Laws* of 2004, No. 64, item 593, as amended).

195. Under the above-mentioned Act on Health Care Benefits Financed from Public Funds and other applicable legal regulations, foreigners who do not have the citizenship of Poland or the European Union member State or the European Free Trade Association member State and who stay in the territory of the Republic of Poland in order to carry out legal work or were granted refugee status, are subject to compulsory health insurance. Foreigners who were granted a permit for tolerated stay or the residence permit for a fixed period or the permit to settle may participate in the Polish health insurance scheme on a voluntary basis.

196. On 1 January 1999, pension reform entered into force and transformed the former defined-benefit scheme into a defined-contribution scheme. The capital part, i.e. open pension funds, was introduced into the pension scheme. Participation in these funds is to be compulsory for all persons insured under the general pension scheme (a transitional period was applied in relation to persons born before 1969 to protect the acquired rights of the insured). On account of introduced changes the legal State concerning old-age and disability insurance considerably changed - the Act of 13 October 1998 on Social Insurance System (*Journal of Laws* of 1998, No. 137, item 887, as amended) and the Act of 17 December 1998 on Old-Age and Disability Pensions from the Social Insurance Fund (*Journal of Laws* of 1998, No. 162, item 1118, as amended) entered into force. The social insurance system is a general system (it covers all social and professional groups) and all employees are subject to it, regardless of their working hours.

197. The health insurance scheme (which provides financial benefits in case of illness or maternity) covers, on a compulsory basis, the following groups of persons:

- (a) Employees;
- (b) Members of agricultural production cooperatives and Farmers' Circles Association (Spółdzielnia Kółek Rolniczych);
- (c) Persons performing substitute forms of military service;
- (d) Other persons compulsorily covered by the retirement and disability insurance who upon their own request joined the health insurance scheme.

198. Insurance against accidents is compulsory with respect to persons covered by old-age and disability insurance. The Act does not make a distinction with regard to the insured person's citizenship, because the social insurance system in Poland is a general system in which the Polish citizens and the persons who do not have Polish citizenship are treated by the same rules. The general principle concerning the right to benefits under the social insurance scheme is that residents who do not have Polish citizenship have the same rights as residents who are Polish citizens, if they meet the conditions for acquiring these benefits, required under Polish legal regulations, because Polish insurance regulations do not use the citizenship criterion as the criterion for gaining the benefit. Polish insurance regulations refer to an insured who, according to article 4 (1) of the Act on the Social Insurance System, is a natural person subject to at least one of social insurances.

#### **J. The right to education and vocational training**

199. Article 70 of the Constitution provides that everyone has the right to education, "education in public schools shall be without payment" and the public authorities ensure universal and equal access to education for citizens. To this end, they establish and support systems for individual financial and organizational assistance to pupils and students.

200. The issue of admitting to schools children of persons who are not Polish citizens is regulated by article 94a of the Act of 7 September 1991 on the System of Education (*Journal of Laws* of 2004, No. 256, item 2572, as amended) and the Regulation of the Minister of National Education of 4 October 2001 on admission of persons who do not have Polish citizenship to public kindergartens, schools, teacher training institutions and establishments (*Journal of Laws* of 2001, No. 131, item 1458).

201. Children who do not have Polish citizenship are provided with education and care in public kindergartens, and children subject to compulsory education are provided with education and care in public primary and lower-secondary schools, public art schools and institutions, including art institutions, on conditions concerning Polish citizens.

202. Students who do not have Polish citizenship and are subject to compulsory education, but those who do not know the Polish language or whose level of knowledge of Polish is insufficient for them to be provided with education, are entitled to additional learning of the Polish language

free of charge, following measures allowing them to learn some Polish, and enabling students to participate in obligatory classes. Additional teaching of the Polish language for these students is organized by the municipality competent with respect to their place of residence.

203. Information on ensuring rights of national and ethnic minorities in the field of education was included in the comments to article 7 of the Convention.

#### **K. The right to equal participation in cultural activities**

204. The right to take part in cultural life is provided for in the first place by the Constitution, but also by the Act of 25 October 1991 on organizing and conducting cultural activity (i.e. *Journal of Laws* of 2001, No. 13, item 123, as amended) which stipulates that the State exercises patronage over cultural activity by supporting and promoting creative activity, education and cultural instruction, cultural activities and initiatives, as well as by protecting cultural heritage.

205. The policies of the Republic of Poland in the field of promotion of cultural identity are generally aimed at the avoidance of two negative phenomena: on the one hand, assimilation and absorption of the minorities culture into the culture of the Polish majority, and on the other hand, cultural isolation of the national minorities. The objective sought is to reach civic integration, maintaining at the same time the right to preserve identity.

206. More information on this subject may be found in comments on article 2 (H): “Integration movements and organizations among national minorities”, in paragraphs 101-107 above.

#### **Article 6**

207. Guarantees of compliance with the non-discrimination principle in contracts of employment were included in articles 18 of the Labour Code, which stipulates that a person in relation to whom the employer has infringed the principle of equal treatment in employment shall have the right to seek indemnity before the court of general jurisdiction. Bringing an action against the employer for indemnity resulting from infringement of the non-discrimination principle is acceptable in any case of discrimination, including sexual harassment. The provisions do not determine the maximum indemnity limit. The legislator reserved only that amount of indemnity may not be lower than the minimum remuneration for work. Therefore, while determining the amount of indemnity in a particular case, the labour court takes into account the type and intensity of a discriminating action of the employer and the results it produced in the employee.

208. An employee’s exercise of the rights resulting from infringement of the principle of equal treatment cannot constitute grounds for the employer’s submitting a notice of termination of the employment relationship or terminating such a relationship without notice (prohibition of victimization).

209. Regardless of these provisions, if the employer infringed the prohibition of discrimination, the employee may terminate the contract of employment without notice when the employer has committed serious violations of basic duties towards the employee - article 55, paragraph 1,

of the Labour Code. On the other hand, in the case of discrimination in relation to establishing the conditions of work or remuneration the employee may apply to the court to establish the right on the basis of the provisions of the Code of Civil Procedure.

210. Under article 415 of the Civil Code, in a case of infringement of the prohibition of discrimination in access to work, it is also possible to demand compensation for the unlawful act. On the basis of general principles of the Civil Code it is also possible to use appeals for the protection of personal goods.

211. An employee who suffers from health problems as a result of mobbing can claim a relevant sum from the employer as cash compensation for the incurred harm (article 94, paragraph 3, of the Labour Code); the legislator did not determine the maximum amount of this compensation. The accepted structure of compensation for harm suffered by an employee as a result of mobbing combines elements of a claim for indemnity related to the ensuing harm to a person (for covering e.g. costs of treatment, medicines), as well as of a claim for compensation, i.e. cash compensation for suffered harm (non-material losses). The manner of awarding the compensation as well as its scope and amount are based on general principles resulting from articles 444, 445 and 448 of the Civil Code. The amount of compensation is determined in accordance with the current living conditions of the society.

212. Another right of an employee who terminated the employment contract as a consequence of mobbing is the right to claim compensation from the employer in the amount of at least the minimum remuneration for work established pursuant to separate provisions (article 94, paragraph 4, of the Labour Code).

213. Cases for compensation on account of discrimination in work as a separate category of cases are examined by courts since 1 January 2002 and on account of mobbing - since 1 January 2004. Although the charge of discrimination or mobbing was repeatedly raised, particularly in relation to claims on account of termination of employment, before these dates there was no possibility of detailing the cases connected with infringement of prohibition of discrimination or with mobbing.

214. In July 2005, an Agreement on Cooperation between the Union of Citizens Advice Bureaux and the Minister of Interior and Administration was signed. The Agreement regulates the rules and forms of cooperation between both parties in the area of combating discrimination on grounds of ethnic origin or nationality. In the framework of cooperation the Union of nearly 30 Citizens Advice Bureaux throughout the country will provide free citizen advice in cases concerning discrimination on grounds of ethnic origin or nationality.

215. Detailed information on the system of controlling the rulings made by the authority of the State were presented in the fifth periodic report of the Republic of Poland on the implementation of the provisions of the International Covenant on Civil and Political Rights, covering the period between January 1995 and 1 October 2003, and during its presentation to the competent Committee.



## Article 7

### A. Education and teaching

216. Education in Poland is compulsory up to 18 years of age. The system of education in Poland is provided for in the Act of 7 September 1991 on the System of Education. It is based on the principle of equal rights of women and men. The reform of the system of education entered into force in Poland on 1 September 1999. It has introduced six-year primary schools and three-year comprehensive schools, where education is universal, free of charge and compulsory. Upon graduation from comprehensive schools, one can pursue education in the following institutions:

- Two or three-year vocational schools
- Three-year secondary schools
- Four-year technical colleges

217. Graduation from the last two types of schools mentioned above makes it possible to take the matriculation examination (*matura*) or to pursue education in vocational colleges for the period of no more than 2.5 years (graduation from vocational colleges allows to receive a diploma certifying professional qualifications on condition of passing the exam). Passing the matriculation examination is the condition for applying to colleges. In Poland, apart from free public schools, there are also paid non-public schools. It is the parents who make the decision which school their child will attend. Admitting a child to a given school is never dependent on their national or ethnic origin, race or religion.

218. The funds allocated for financing public schools are transferred from the State budget to the entities in charge, i.e. local self-government units within the Educational Part of the General Subvention. Non-public schools, on the other hand, receive funds from the budget of the local self-government unit (municipality or county).

219. Subsidies for non-public schools with the qualifications of public schools and which provide compulsory education or schooling, are allocated for every student in an amount not lower than the amount provided for a student of a given type and kind of school under the Educational Part of the General Subvention for a local self-government unit.

### B. Education of children belonging to national minorities

220. According to article 35 of the Constitution of the Republic of Poland, persons belonging to national or ethnic minorities shall have the right to study their native languages and to study in their native languages. According to article 17 of the Act on National and Ethnic Minorities and Regional Language, the right of persons belonging to minorities to learn their native language in the form of classes performed in this language as well as their right to learn their history and culture is executed according to the principles and under the mode specified in the Act of 7 September 1991 on the System of Education (*Journal of Laws* of 2004, No. 256, item 2572;

No. 273, item 2703 and No. 281, item 2781). Pursuant to article 13 of the latter Act, schools and public institutions are to enable students to maintain their national, ethnic, linguistic and religious identity, in particular their language, history and culture.

221. The organization of the teaching of a specific native language performed in this language, as well as the implementation by public schools of the tasks allowing the maintenance of a sense of national, ethnic, linguistic and religious identity among its students from national minorities and ethnic groups, falls within the competence of the minister competent for education-related matters. Specific regulations concerning the education of children and youth belonging to national and ethnic minorities have been included in the Regulation of the Minister of National Education of 7 September 2004 on Conditions and Method of Grading, Classifying and Promoting Students and Listeners and Conducting Examinations and Tests in Public Schools (*Journal of Laws* No. 199, item 2046, as amended) and in the Regulation of 28 December 2003 on the Principles of Distribution of the Educational Part of the General Subvention for Local Self-government Units in 2005 (*Journal of Laws* of 2004, No. 286, item 2878, as amended), which provides, among others, for an increase in the educational subvention by 20 or 100 per cent for schools where a minority language is a language of instruction. The said regulations also apply to a regional language.

222. The needs of parents, students and the community of a given minority are taken into account in the organization of those schools in which children belonging to national minorities are to receive their education. In Poland there are schools which provide instruction in the languages of minority groups, schools with additional classes of such languages, as well as bilingual schools. Classes where the language of instruction is that of a minority group are organized for a group of 7 students and more in a primary school and lower-secondary school, and for 14 students and more in an upper-secondary school. In schools where the instruction is conducted in the language of a minority, geography and history of the country of origin are taught. The study of all subjects is carried out in the language of the minority, with the exception of the Polish language, Polish literature and the history of Poland.

223. In upper-secondary schools where the language of instruction is that of a national or ethnic minority, this language is an obligatory subject taken at the matriculation examination. In schools where the language of instruction is the native language, and in bilingual schools, the graduates may take the matriculation examination - with the exception of the Polish language - in the language of a given national minority. The schools where the language of instruction is the native language issue bilingual school-leaving certificates.

224. Since September 2004, parents may apply to the principal of the school for the children to take primary and lower-secondary school-leaving examinations in a minority language. Students of schools or sections where the teaching language is that of a national minority, or where classes are delivered in this language, may also take the lower-secondary school exam or the relevant part of this exam in Polish or in the language of a given national minority. Schools may also introduce additional internal exams in the language of a given national minority and history and geography of the country of origin.

225. In schools with additional classes in the language of a minority, as well as in bilingual schools, there is a possibility of teaching elements of history and geography of the country of origin. Kindergartens provide the possibility for children belonging to national or ethnic minority to have contact with their mother tongue as well.

226. In 2002, the Minister of National Education and Sports and the Minister of Interior and Administration adopted the “Strategy for development of the Lithuanian education in Poland”. This document was developed by the Ministry of Interior and Administration and the former Ministry of National Education and Sports in cooperation with the Chief Education Officer in the Podlaskie Voivodeship, self-government authorities as well as the Lithuanian Community in Poland and the Association of Lithuanians in Poland. This document describes in detail the problems concerning the education of the Lithuanian minority and proposals of actions aimed at solving these problems.

227. Data on schools where a minority language is taught and on students involved in these classes in the school year 2004/05 were as follows (according to information of the Central Statistical Office).

**Table 3**  
**Schools where a minority language is taught and the number of students receiving education in a minority language**

Language	Number of schools	Number of students
Belarusian	38	3 622
Hebrew	1	59
Lithuanian	16	740
German	332	35 537
Slovak	9	268
Ukrainian	116	2 756
Kashubian	88	4 254
Lemko	25	325

(Note: The above data do not cover the so-called “zero” forms and inter-school groups learning a minority language.)

228. The education of Roma youth has been discussed in paragraphs 27-39 above.

229. On 1 January 2003, new regulations concerning the financing of additional classes aimed at providing equal educational opportunities and sustaining the sense of ethnic identity of Roma students entered into force. Schools which organize such classes are entitled to a larger amount of the financial support allocated under the Educational Part of the General Subvention to local self-government units.

230. The Ministry of Education cooperates with unions and associations of national and ethnic minorities in financing educational programmes and textbooks for national and ethnic minorities.

### **C. Teaching of religion**

231. Article 12 of the Act on the System of Education introduces the possibility of organizing religious instruction in public schools. The right to organize confessional religion within the framework of the educational system has also been included in the acts adopted by the Sejm of the Republic of Poland dealing with the relationship between the State and individual churches and religious associations.

232. In Polish public kindergartens, as well as in primary and comprehensive public schools, religious instruction is organized at the request of parents (legal guardians), and, in schools at the post-primary level, upon the request of parents or students (upon their coming of age, such wish may be expressed by students themselves). Such a principle introduces the possibility of organizing religious instruction of different denominations in public schools, provided that a church or a religious association which represents a given denomination has legal personality in the Republic of Poland.

233. According to the data of the Central Statistical Office for 2002 (*Religious denominations - National and ethnic associations in Poland in 2000-2002*), the Catholic Church has the largest number of faithful in the Republic of Poland - 34,312,800 members. (The information included in paragraphs 99-101 of the previous report remains valid.)

### **D. Culture**

234. The Ministry of Culture and National Heritage supports activity of organizations which popularize, promote and maintain the culture of national and ethnic minorities by subsidizing this activity under operational programmes and artistic and educational events. Through the use of art values in the process of integration and education the managers of events increase social awareness and eliminate harmful stereotypes which lead to xenophobic attitudes. Moreover, the concern of the managers and originators is to preserve memory of the common multicultural past. The honourable patronage of the Minister of Culture and National Heritage involves also undertakings connected with the presentation of the culture of minorities, e.g. "Pod Kyczerą" - European Festival of National and Ethnic Minorities, the International Scientific Conference "European Multicultural Society Dialogue at the Border of Cultures and the Fourth Jewish Meetings in Chmielnik.

235. On 31 January 2005, the competencies of the Minister of Culture and National Heritage were taken over by the Minister of Interior and Administration. The Group for Culture of National and Ethnic Minorities was created within the structure of the Department of Denominations and National and Ethnic Minorities.

236. The cultural issues were discussed in comments to article 5 (the right to equal participation in cultural activities) and to article 2 (integration movements and organizations among national and ethnic minorities).

## E. Information

237. The Constitution of the Republic of Poland, in its article 54 (1) on freedom of speech and the press, recognizes the freedom to express opinions, to acquire and to disseminate information as a fundamental value of democracy. In relation to national and ethnic minorities these rules and, in particular, the definition of public mission, implemented by the Act of 2 April 2004 amending the Act on Radio and Television Broadcasting (*Journal of Laws* of 2004, No. 91, item 874), are implemented on the basis of the Act of 29 December 1992 on Radio and Television Broadcasting (i.e. *Journal of Laws* of 2004, No. 253, item 2531, as amended). Article 21 (1) of the above-mentioned Act stipulates that public radio and television carry out their public mission by providing, on terms laid down in the Act, the entire society and its individual groups with diversified programme services and other services in the area of information, journalism, culture, entertainment, education and sports which are pluralistic, impartial, well balanced, independent and innovative, marked by high quality and integrity of broadcast.

238. The above-mentioned Act, defining detailed tasks of public radio and television, emphasizes also the role and significance of local communities, indicating in article 21 (1a) (1) that these tasks include “production and transmission of national and regional programme services, programme services for reception abroad in the Polish language and in other languages as well as other programme services meeting the democratic, social and cultural needs of local societies”.

239. The Act includes also two provisions referring to “the Christian system of values”. Article 18 (2) stipulates that: “Programmes or other broadcasts shall respect the religious beliefs of the public and especially the Christian system of values”. Article 21 (2) (6) stipulates that: “Programme services of public radio and television should respect the Christian system of values, being guided by the universal principles of ethics”. The group of Members of Parliament referred the above provisions to the Constitutional Tribunal as being at variance with constitutional regulations, claiming the infringement of the principle of equality and introducing preventive censorship. The Constitutional Tribunal stated that the referred provisions were in compliance with constitutional provisions left in power on the basis of the then Constitutional Act of 17 October 1992 on the mutual relations between the legislative and executive institutions of the Republic of Poland and on local self-government (*Journal of Laws* of 2004, No. 84, item 426, as amended), recognizing that the provisions created only the obligation to respect rather than be guided by values of a universal nature rather than only religious.

240. The Act on National and Ethnic Minorities and Regional Language introduced into the duties of public radio and television arising out of the implementation of the public mission, specified in article 21 (1a) of the Act on Radio and Television Broadcasting, the obligation of “paying due regard to the needs of national and ethnic minorities and communities speaking regional languages, including broadcasting news programmes in the languages of national and ethnic minorities and in regional languages”. This provision allows it to take various actions, without limiting itself to the obligation to broadcast news programmes in the languages of national and ethnic minorities and in regional languages.

241. The solution introduced by the Act on National and Ethnic Minorities and Regional Language in article 30 (4a) of the Act on Radio and Television Broadcasting, which specifies the manner of appointing Programme Councils of companies of public radio and television broadcasting, is aimed at taking into consideration to a larger extent the needs of national and ethnic minorities. The introduced provision stipulates that “when appointing Programme Councils of branches broadcasting programme services in the languages of national and ethnic minorities and in regional languages, branch directors shall take into account candidates put forward by social organizations of national and ethnic minorities and communities speaking regional languages”.

242. In March 2004, the National Broadcasting Council appointed new Programme Councils for public radio and television broadcasting, which comprised nine persons proposed by organizations of national and ethnic minorities and the community using the regional language.

243. Moreover, article 18 of the Act on National and Ethnic Minorities and Regional Language stipulates that public authorities shall be obligated to take appropriate measures in order to support the activity aimed at the protection, maintenance and development of cultural identity of the minority. It should be emphasized that, among its other forms of support, this provision includes targeted grants and core grants to finance “support for TV and radio programmes made by the minorities”.

244. The National Broadcasting Council is an important body which acts for pluralism. According to article 213 (1) of the Constitution of the Republic of Poland, the National Broadcasting Council safeguards the freedom of speech, the right to information as well as safeguards the public interest regarding radio broadcasting and television. The National Broadcasting Council as an organ for defence of rights first of all controls and evaluates programmes transmitted by broadcasters from a point of view of basic and socially accepted values. According to article 18 of the Act on Radio and Television Broadcasting, broadcasts may not encourage actions contrary to the moral values and social interest and should respect the religious beliefs of the public. In particular, broadcasts may not include any discrimination on grounds of race, sex or nationality. A broadcaster who, in the opinion of the Council, infringed the above provision is liable to a fine in accordance with principles determined in the Act.

245. In 2005, Telewizja Polska S.A. broadcast programmes for national and ethnic minorities in its TVP 3 Regionalna channel (compiled centrally in Warsaw and sent to its local divisions via satellite) and in regional frequency bands of TVP 3 Regionalna.

246. The Białystok local division broadcast programmes targeting the following minorities: Belarusian (*Tydzień Białoruski*, or Belarusian Week, in Belarusian), Ukrainian (*Przegląd Ukraiński*, or Ukrainian Digest, in Ukrainian), Lithuanian (*Panorama Litewska*, or Lithuanian Panorama, in Lithuanian), Roma (*My Romowie*, or We the Roma, in the Roma language), Russian (*Rosyjski Głos*, or The Russian Voice, in Russian), Tartar (*Podlaski Orient*, or Orient in Podlasie, in Polish). Local divisions in Katowice and Opole presented a series of programmes entitled the *Schlesien Journal* and the Olsztyn division - *Więści ukraińskie* (Ukrainian News). In 2005, one programme in the regional language was broadcast only by the Gdańsk local division; the programme was *Rodno zemia* magazine in Kashubian, devoted to the problems of Kashubians living in Pomerania. The programme took a total of 41.6 hours of airtime.

247. As in previous years, in 2005 programmes addressed to national and ethnic minorities were presented by the majority of local public radio stations. They were, however, broadcast neither by nationwide Polskie Radio channels nor by channels of individual cities broadcast by local stations. In 2005, broadcast time of programmes for national and ethnic minorities was 985 hours in total, i.e. 0.7 per cent of their annual airtime. The majority of programmes were presented in national languages of the communities (726 hours, i.e. 0.5 per cent). The remaining programmes addressed to the minorities were presented in Polish (259 hours, 0.2 per cent).

248. Programmes in the languages of national and ethnic minorities were broadcast by 11 local radio stations. Similar to previous years, programmes in the languages of ethnic groups were presented by regional broadcasting stations. Radio Gdańsk and Radio Koszalin broadcast in Kashubian language.

249. Programmes for national and ethnic minorities presented in Polish were broadcast by Radio Zielona Góra, Warsaw, Łódź, Lublin and Bydgoszcz.

250. As in previous years, Radio Olsztyn put in a lot of effort to produce programmes addressing the needs of national and ethnic minorities - it produced three times as many programmes as the local radio (50 hours a year) and broadcast them via the additional transmitter installed in Miłki (135 hours a year).

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