



# **ECRI REPORT ON POLAND**

**(fourth monitoring cycle)**

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ECRI Secretariat  
Directorate General of Human Rights and Legal Affairs  
Council of Europe  
F-67075 STRASBOURG Cedex  
Tel.: + 33 (0) 388 41 29 64  
Fax: + 33 (0) 388 41 39 87  
E-Mail: [combat.racism@coe.int](mailto:combat.racism@coe.int)

[www.coe.int/ecri](http://www.coe.int/ecri)

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## FOREWORD

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

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

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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

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

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 18 December 2009 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**



## SUMMARY

**Since the publication of ECRI's third report on Poland on 14 June 2005 progress has been made in a number of fields covered therein.**

Minorities are increasingly accepted and the general attitude towards non-citizens is benevolent. The influence of antisemitic politicians has waned. Highly symbolic steps have been taken to stress the country's inclusive character, including support for Jewish culture. A Government Plenipotentiary for Equal Treatment has been appointed and the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance, which she coordinates, has been extended until 2013. A draft bill has been prepared to transpose the EU racial-discrimination and equality-in-employment-and-occupation directives. In the field of criminal law, the National Prosecutor's Office has taken important initiatives against racially motivated offences. Judges, prosecutors and law-enforcement officers have been provided with relevant training and victim-support centres have been set up.

The 2005 Act on National and Ethnic Minorities and the Regional Language provides for a series of positive measures in their favour and for a consultative body, the Joint Commission of the Government and National and Ethnic Minorities. The European Charter for Regional or Minority Languages has been ratified. The separate classes for Roma children are being phased out. A well-funded Programme for the Benefit of the Roma Community in Poland has been adopted for the period 2004-2013, which is being carried out with the involvement of the beneficiaries. The payment of integration assistance has been extended to non-citizens who formerly qualified for tolerated status. Measures have been taken to support the education of non-citizen children. Finally, high-profile events have been organised to warn about the risks of racism in sports and human rights plenipotentiaries have been appointed in the police force.

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

Discriminatory attitudes persist in many fields, including employment, housing and law enforcement. So does antisemitism. A particularly worrying aspect is its tacit acceptance by an influential media-group belonging to a Catholic organisation and sometimes even by mainstream political parties. Some football fans engage in openly racist behaviour. Numerous websites and publications encourage ethnic and religious hatred. The activities of certain extreme right-wing organisations continue unabated. There have been instances of racist violence.

The response of the authorities is not always adequate. On the one hand, they are confronted with technical and legal difficulties. The resources available for the fight against internet crime are not adequate and offenders are difficult to identify in stadiums. The right to freedom of expression is sometimes interpreted in an overly broad manner and international cooperation is not always forthcoming. On the other hand, the provisions allowing for the disbanding of associations are applied in a rather weak manner and the criminal code does not contain a general provision rendering racial motivation an aggravating circumstance in all cases. Moreover, victims appear reluctant to complain. For example, the complaints received by the Ombudsman and the National Broadcasting Council are disproportionately low. The bill aimed at introducing comprehensive anti-discrimination legislation has not been enacted yet and there is no specialised body in this respect. Nor is there an independent mechanism for the examination of complaints against law-enforcement authorities. No satisfactory attempts have been made to gauge the extent of discrimination in social life and there are no disaggregated ethnic data.

The situation of the Roma community still leaves a lot to be desired. The very low rate of attendance of compulsory-schooling facilities by Roma children is very disturbing. The Programme for the Benefit of the Roma Community in Poland is not applied with the same enthusiasm by all mayors. Other historical minorities also have complaints concerning, for example, the scope of application of the 2005 Act on National and Ethnic Minorities and the Regional Language and the law on the Muslim community. A large number of non-citizens are in an illegal situation enjoying, as a result, limited social rights. The integration of refugees and asylum-seekers is not always facilitated and there are some aspects of care in the reception and guarded centres that need improvement. Some non-citizens encounter bureaucratic difficulties. Finally, a limited number of non-citizen children do not attend school.

**In this report, ECRI requests that the Polish authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

The Government should present comprehensive legislation against discrimination, drawing inspiration from ECRI's General Policy Recommendation No. 7, to Parliament as soon as possible\*. A provision should be inserted in the Criminal Code expressly rendering the racial motivation of an offence an aggravating circumstance. There should be clearly drafted general provisions on sharing the burden of proof in racial-discrimination cases. Efforts should be made always to interpret the existing provisions of the Constitution in a manner that would provide redress for discrimination on all possible grounds in accordance with ECRI's General Policy Recommendation No.7. Poland should ratify Protocol No. 12 to the European Convention on Human Rights, the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, the Revised European Social Charter, the European Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Poland should have an independent specialised body for combating racism and racial discrimination\*. The authorities should continue their efforts to prosecute all racially motivated offences, including those committed on the internet. The victim-support centres should be consolidated. Technology should be increasingly used to apprehend those responsible for racially motivated offences in stadiums. The courts should recognise that public incitement to racial hatred may take different forms. Evidence that would warrant the disbanding of groups promoting racism should be actively collected.

Concrete and measurable targets should be established for the second part of the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance. The Ministry of National Education should also set an ambitious target for increasing Roma children's nursery school attendance in the next two years. The authorities should take steps to ensure the same compulsory-schooling-facilities attendance-rate for citizens and non-citizens, irrespective of their residence status. Situation testing should be used to gauge the extent of racial discrimination in employment, housing and access to goods and services. Refugees and protected persons should be further assisted in finding jobs and accommodation. There should be a survey concerning the quality of health care in reception centres. The question of illegal Roma settlements should be solved in a durable manner.

Intolerant political statements should be met with an appropriate response. The National Broadcasting Council should show increased vigilance concerning racism. Reports on criminal cases should not disclose the ethnic origin, religion, language or nationality of the accused unless these are directly relevant. The authorities should

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



raise within the Joint Commission of the Government and the Polish Episcopate the issue of the Catholic Church's opinion-leader role in the fight against racism. They should encourage the Polish Football Association to develop, together with the football clubs, a code of conduct that would address the issue of fans' racism. Moreover, they should step up their efforts to raise awareness about the dangers of racism in sport\*.

The authorities should continue their active engagement against antisemitism and in support of Jewish culture. "Ethnic"-minority parties should be treated in the same manner as "national"-minority parties under the 1993 Parliamentary Elections Act. The authorities should continue working with representatives of historical minorities on their remaining complaints. Voivodeships should follow closely the number and nature of projects submitted by each mayor the Programme for the Benefit of the Roma Community in Poland, which should be properly explained to all segments of Polish society. Equally, there should be awareness-raising about the situation of asylum-seekers and refugees. The authorities should address the question of whether the period of integration assistance to refugees and protected persons should be extended. They should also examine the complaints concerning the procedures for granting tolerated status and residence and work permits. Non-citizens in an illegal situation who cannot be expelled should not be detained.

Finally, there should be an independent mechanism for the examination of complaints against law-enforcement officials. Disaggregated ethnic data should be systematically collected in accordance with the principles of anonymity, informed consent and voluntary self-identification. The authorities should strengthen their efforts to eradicate racism by action addressed to children at school. A large-scale campaign for tolerance should be addressed to society at large.

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



## FINDINGS AND RECOMMENDATIONS

### I. Existence and Implementation of Legal Provisions

#### International legal instruments

1. In its third report, ECRI recommended that Poland should ratify the European Charter for Regional or Minority Languages to its fullest extent, Protocol No. 12 to the European Convention on Human Rights, the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, the Revised European Social Charter, the European Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
2. ECRI notes with satisfaction that Poland has ratified the European Charter for Regional or Minority Languages (Language Charter)<sup>1</sup> granting the same degree of protection under its Part III to the following languages: Belorussian, Czech, Hebrew, Yiddish, Karaim, Kashub, Lithuanian, Lemko, German, Armenian, Romani, Russian, Slovak, Tatar and Ukrainian. Whether these commitments correspond to the real needs of Poland's minority and regional languages is an issue to be revisited in the monitoring of compliance by the competent bodies under the Charter.
3. ECRI has been informed that the authorities are examining the implications of signing and ratifying Protocol No. 12. They are ready to ratify the Additional Protocol to the Cybercrime Convention, which they signed on 21 July 2003; however, some issues concerning the Cybercrime Convention – also signed but not ratified by Poland – must be settled first. The authorities do not intend to ratify the Revised European Social Charter (signed on 25 October 2005) in the near future because of the difficulties they encounter in applying the European Social Charter as currently interpreted<sup>2</sup>. Nor do they intend to ratify or sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; for them, this is an instrument that also grants rights to immigrants in an illegal situation, while Poland's policy is to have them removed from its territory. Finally, the authorities do not intend to ratify or sign the European Convention on the Participation of Foreigners in Public Life at Local Level. They have already granted all European Union citizens the right to vote and stand in local elections and are not prepared to go beyond that.
4. ECRI regularly stresses the critical importance of Protocol No. 12 for its mandate. The same holds true for Article E of the revised European Social Charter, which enshrines the principle of non-discrimination in the enjoyment of the rights guaranteed thereunder. The revised Charter can, in addition, provide guidance in addressing the poverty, social exclusion and housing issues that affect some of the vulnerable groups discussed in this report. Ratification of the Protocol to the Cybercrime Convention will, *inter alia*, help Poland overcome some of the international-cooperation problems also identified here below<sup>3</sup>. As regards the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ECRI, in another section of the present report,

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<sup>1</sup> The Language Charter entered into force, for Poland, on 1 June 2009.

<sup>2</sup> For example, the European Committee of Social Rights has considered that certain family benefits and social services are not accessible to nationals of other States parties to the European Social Charter under conditions that satisfy the requirements of its Articles 14 and 16 (due to the excessive length of the residence requirement).

<sup>3</sup> See Climate of opinion, public discourse and opinion leaders/Media, including the internet, and publications.

considers that Poland should find new ways of addressing the problems facing its numerous immigrants who are still in an illegal situation<sup>4</sup>. Ratifying this treaty may be seen as part of this process. Finally, the European Convention on the Participation of Foreigners in Public Life at Local Level should be seen as an instrument for the further integration of legal immigrants in Polish society.

5. ECRI recommends again that Poland ratify Protocol No. 12 to the European Convention on Human Rights, the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, the Revised European Social Charter, the European Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

### **Constitutional and other fundamental provisions**

6. In its third report, ECRI recommended that Article 32 of the Constitution should contain a non-exhaustive list of possible grounds for discrimination, such as “race”, colour, language, religion, nationality and national or ethnic origin.
7. According to Article 32 of the Constitution, “no one shall be discriminated against in the political, social or economic life for any reason whatsoever”. ECRI notes that the national courts’ interpretation of the words “for any reason whatsoever” is rather broad. However, there are situations where judges appear to need additional guidance. The judgement delivered on 5 October 2007 by the Supreme Court in a civil case brought by Polish citizens working as cashiers at a petrol station who wanted to complain about differences in salary with their colleagues from Germany is an example. Before rejecting the complaint, the court recalled, *inter alia*, that German citizens had been hired because they fitted better with the employer’s expectations concerning the service to be provided to customers from Germany.
8. ECRI recommends that efforts should be made always to interpret the existing provisions of the Constitution in a manner that would provide redress for discrimination on all possible grounds in accordance with its General Policy Recommendation No. 7<sup>5</sup>.
9. In its third report, ECRI recommended that the definitions in the 2005 Act on National and Ethnic Minorities and the Regional Language (the 2005 Act) should be applied to the 2001 Law on elections to the Sejm of the Republic of Poland and the Senate of the Republic of Poland in a manner that ensured the full participation of all minority groups in public life.
10. ECRI notes that “national”-minority parties may under the 2001 Law on elections to the Sejm of the Republic of Poland and the Senate of the Republic of Poland elect MPs locally without having to cross the 5% national threshold (8% for coalitions). No such provision is made for “ethnic”-minority parties. According to the 2005 Act, “national” minorities identify themselves with “nations organised in their own states”, while “ethnic” minorities do not. In ECRI’s view, this distinction is unrelated to the question of parliamentary representation.
11. ECRI recommends that “ethnic”-minority parties be treated in the same manner as “national”-minority parties under the 2001 Law on elections to the Sejm of the Republic of Poland and the Senate of the Republic of Poland

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<sup>4</sup> See Vulnerable groups/Non-citizens.

<sup>5</sup> On national legislation to combat racism and racial discrimination.

## Criminal law

12. In its third report, ECRI strongly encouraged the authorities to enact legislation that would render the racial<sup>6</sup> motivation of an offence an aggravating circumstance.
13. The authorities have observed that, although the Criminal Code expressly invites courts to take into account the perpetrator's motivation when imposing a sanction, it does not contain a list, exhaustive or indicative, of factors that could amount to aggravating circumstances. ECRI notes that Article 53 § 2 of the Criminal Code provides detailed guidance for the "imposition of the penalty": for example, courts are invited to take into account whether the offence has been committed together with a minor or not.
14. ECRI again strongly encourages the authorities to enact legislation that would expressly render the racial motivation of an offence an aggravating circumstance.
15. In its third report, ECRI recommended that the competent authorities should fully acknowledge and take into account the racial motivation of offences in order to investigate and prosecute them effectively.
16. ECRI notes that the National Prosecutor's Office has taken three initiatives in this connection: closer supervision of investigation proceedings<sup>7</sup>, appointment of specially tasked prosecutors at appellate level and collection of specialised statistics. According to information available to ECRI, these measures are beginning to bear fruit. Several decisions not to prosecute<sup>8</sup> have been reversed<sup>9</sup> and there have been very few recent cases of racially motivated offences that have not been prosecuted on the ground that they have "not caused significant social harm" (Article 17 § 1.3 of the Code of Criminal Procedure).
17. Generally speaking, in recent years, the number of racially motivated offences - investigated and prosecuted - has increased to a certain degree<sup>10</sup>. This might well be the result of increased awareness and improvement in data collection. Moreover, ECRI's attention has been drawn to the fact that, this increase notwithstanding, racially motivated offences might remain underreported. Various

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<sup>6</sup> According to General Recommendation No. 7, motives related to "race" are not the only ones to be taken into account; those related to colour, language, religion, nationality or national or ethnic origin are also relevant.

<sup>7</sup> On 16 October 2009, the concluding observations of the Committee for the Elimination of Racial Discrimination were brought to the attention of prosecutors and the police who were asked to deal with racially motivated offences with increased effectiveness.

<sup>8</sup> In 2007 mistakes were found in 6 decisions not to prosecute (out of the 27 examined) and in 2008 in 21 (out of 64).

<sup>9</sup> Including the decision of a district court in Opole to discontinue proceedings against three National-Radical Camp members who had on two separate occasions publicly used "the ancient Roman salute". In December 2008 the accused were found guilty, on retrial, under Article 256 of the Criminal Code, which punishes the public promotion of fascism or another totalitarian regime and incitement of national, ethnic, racial or religious hatred.

<sup>10</sup> This is true of both Articles 256 (*supra*) and 257 (which punishes public insults based on national, ethnic "racial" or religious affiliation) of the Criminal Code: 88 cases of suspected breach of the first provision were investigated, 33 were prosecuted and 18 referred to the family court (because they involved minors) in 2008 as opposed to 18, 10 and 0 in 2005; the figures for the second provision were 50 cases investigated, 14 prosecuted and 18 referred to the family court in 2008 as opposed to 34, 25 and 4 in 2005. The figures for Article 119 of the Criminal Code (which punishes violence and threats on the basis of national, ethnic or religious affiliation) show a decline in the number of investigated and prosecuted offences. No offences have been committed under Article 118 of the Criminal Code, which punishes homicide and serious detriment to the health committed on, inter alia, ethnic, "racial" or religious grounds. According to the authorities, these are the four Criminal-Code provisions that are mostly relevant for the fight against racism. It is to be noted that a law has been passed extending the field of Article 256 as from June 2010.

reasons have been cited, among which: there is no effective victim-support system and victims of racially motivated offences might already be in a vulnerable situation.

18. Measures to address the first concern have been taken: 16 centres have been recently created in the voivodeships<sup>11</sup> to provide legal assistance and psychological and social support to victims of crime. It is the authorities' intention to staff them - whenever possible - with persons mastering foreign languages. As regards the second concern, ECRI has sought and received assurances that immigrants in an illegal situation may also avail themselves of these centres' services.
19. In a parallel development, the authorities have organised training on racially motivated offences for the judiciary and law-enforcement authorities. This is discussed below.
20. One area in which the authorities' efforts need to be strengthened is prosecuting racially motivated offences in stadiums<sup>12</sup>. The authorities attribute the low number of prosecutions to difficulties in detecting individual offenders<sup>13</sup>. ECRI is aware of the difficulties<sup>14</sup>. However, it considers that these may be, to a certain degree, overcome through the use of technology, such as surveillance cameras.
21. Moreover, in February 2007 the Supreme Court decided that holding a placard reading "We shall liberate Poland from (among others) Jews" did not amount to an offence under Article 256 of the Criminal Code<sup>15</sup>. To reach this conclusion the court referred to Article 54 § 1 of the Constitution, which protects the right to express opinions, the ordinary meaning of the word "liberate" and the use of the indicative, as opposed to the imperative, which showed no intention to incite national hatred. ECRI recalls in this connection that, according to Article 10 of the European Convention on Human Rights, the right to freedom of expression may be restricted to protect the rights of others. It also considers that allowing the holding of such a placard to go unpunished falls foul of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
22. ECRI recommends that the authorities continue their efforts to prosecute all racially motivated offences. It also recommends that the 16 victim-support centres be strengthened. Moreover, it recommends that victim-support centres and judicial authorities who deal or have dealt with racially motivated offences against immigrants in an illegal situation refrain from communicating information that could alert the immigration authorities. Furthermore, it recommends increased use of technology to apprehend those responsible for racially motivated offences in stadiums. Finally, it recommends that the courts recognise that public incitement to racial hatred may take different forms, including the total rejection of a religious or national group.

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<sup>11</sup> Administrative units corresponding to regions.

<sup>12</sup> According to the authorities, of the 253 alleged offences that were investigated under Articles 256 and 257 of the Criminal Code in 2007 and 2008, only 12 were committed in stadiums.

<sup>13</sup> Despite the use of 'spotters', i.e. police officers with special connections in the fans' community.

<sup>14</sup> During the examination of Poland's last report by CERD the authorities provided the figure of four indictments in relation to football hooliganism in 2004-2009. In the meantime, the law has been changed to increase the penalties for certain offences committed in stadiums: entering the playing field, throwing objects at players and wearing a mask during a fight.

<sup>15</sup> See above.

## Civil and administrative law

23. In its third report, ECRI recommended that the authorities should take action, in accordance with Article 13 of the Constitution and national law, against groups that promote racism<sup>16</sup>, as *per* its General Policy Recommendation No. 7.
24. ECRI notes that, under Article 29 of the Law on Associations, the competent court, at the request of the prosecutor, may disband an association engaging in activities that are “flagrantly” or “repeatedly” against the law. The authorities have informed ECRI that all appellate prosecutors’ offices were instructed in 2005 and 2006 to assess whether available evidence - collected in criminal-investigation proceedings - warrants the disbanding of groups promoting racism. So far action has only been taken against the National-Radical Camp in Opole. The relevant proceedings (started in 2007) were adjourned pending the outcome of a criminal case against some of its members. They were resumed following the latter’s conviction<sup>17</sup> and the group in question was disbanded by the court of first instance in 2009<sup>18</sup>.
25. ECRI has received information that the National-Radical Camp in Opole is not the only group promoting racism in Poland. Associations bearing the same name have been registered in other parts of the country. Even if their membership is limited, ECRI is concerned about their activities. ECRI is also not convinced about the need to rely on evidence collected in criminal proceedings in order to institute disbandment proceedings; usually the burden of proof in civil cases is not the same as in criminal ones.
26. ECRI recommends that the authorities take an active stance in collecting evidence that would warrant the disbanding of groups promoting racism. The evidence in question need not be such as to warrant criminal action against the groups’ members.
27. In its third report, ECRI encouraged the authorities to adopt comprehensive legislation against discrimination drawing inspiration from its General Policy Recommendation No. 7.
28. The authorities have informed ECRI that a draft bill has been prepared by the Ministry of Labour and Social Policy to ensure compliance with Council Directives 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. This bill is currently pending before the Council of Ministers, although at the time of the ECRI delegation’s visit several NGOs seemed to be unaware of that. NGOs have also complained about the consultation procedure preceding the draft bill’s finalisation; one of the issues was lack of clarity as to who their interlocutor should be: the Ministry of Labour and Social Policy or the Government Plenipotentiary for Equal Treatment?
29. As regards NGOs’ concerns regarding the scope of the draft bill, ECRI has received assurances from the authorities that it reflects its General Policy Recommendation No. 7. ECRI wishes to stress that EU member states that legislate in the field of non-discrimination can also turn to GPR No. 7 for

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<sup>16</sup> According to General Policy Recommendation No. 7, racism is the belief that a ground such as “race”, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons or the notion of superiority of a person or a group of persons.

<sup>17</sup> See “the ancient Roman salute” case above.

<sup>18</sup> The authorities have informed ECRI that consideration is being given to taking action against the National Restitution of Poland and the Nationalist Association Zadruga on the basis of evidence collected either in criminal-investigation proceedings or from websites and during controversial demonstrations.

guidance. This would enable them, *inter alia*, to anticipate the adoption of many of the provisions of the draft Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

30. ECRI recommends that the Government present comprehensive legislation against discrimination, drawing inspiration from its General Policy Recommendation No. 7, to Parliament as soon as possible. Responsibility for this legislative initiative should rest with a single Governmental entity, which should consult NGOs.
31. In its third report, ECRI recommended that the authorities should clarify the scope and applicability of the concept of sharing the burden of proof in racial discrimination<sup>19</sup> cases to avoid confusion when cases are brought to court.
32. The authorities have given ECRI additional information on Article 183b of the Labour Code, which provides for sharing the burden of proof in employment cases. They have also pointed out to Article 24 § 1 of the Civil Code, which provides a remedy to persons risking infringement of their “personal rights”<sup>20</sup>, unless the activity complained of, is lawful.
33. ECRI considers that Article 183b of the Labour Code is sufficiently clear. However, the same cannot be said of Article 24 § 1 of the Civil Code, which in any event would not concern all fields of government action.
34. ECRI recommends that the authorities introduce clearly drafted provisions on sharing the burden of proof in racial-discrimination cases that would also apply outside the labour-law field.

### **Anti-discrimination bodies**

35. In its third report, ECRI strongly encouraged the authorities to set up, in the near future, an independent body specialised in combating racism and racial discrimination - with branches throughout Poland - and endow it with the necessary human and financial resources. It also encouraged all competent authorities to implement the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance in cooperation with civil society and to allocate to it adequate resources.
36. ECRI has been informed of the authorities' intention to grant to the independent Commissioner for Civil-Rights Protection (Ombudsman) part of the powers which the specialised body should have under General Policy Recommendations No. 2 and 7. Essentially the Ombudsman would be competent to deal with individual cases. The authorities also intend to grant the Government Plenipotentiary for Equal Treatment other powers that a specialised body should have. S/he would be competent for policy development, advising the authorities and awareness-raising. ECRI notes that the Ombudsman, who is an independent organ, is already active in all fields covered by its mandate. He processes complaints, conducts investigations, institutes and participates in court proceedings, undertakes studies, provides other public bodies with advice, proposes legislative initiatives, conducts campaigns and cooperates with NGOs. ECRI also notes that

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<sup>19</sup> According to General Policy Recommendation No. 7, racial discrimination is any differential treatment based on a ground such as “race”, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>20</sup> Article 23 of the Civil Code contains a non-exhaustive list of “personal rights”: health, liberty, reputation, freedom of conscience, name or pseudonym, image, confidentiality of correspondence, inviolability of the home, scientific or artistic work, inventions and “improvements”.



the Government Plenipotentiary for Equal Treatment is not an independent authority.

37. ECRI recommends that the authorities ensure that an independent body is entrusted with all the powers which the specialised body for combating racism and racial discrimination should have under General Policy Recommendations No. 2 and 7.
38. ECRI further notes that a Government Plenipotentiary for Equal Treatment, having the rank of Secretary of State, has been appointed with effect from 30 April 2008. Her role being to mainstream equality into the Government's decision-making process, she monitors, coordinates and supervises all anti-discrimination activities on behalf of the Prime minister. She is also responsible for the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance, in place since 2004.
39. Upon the Plenipotentiary's appointment, the process of stocktaking of the programme was set into motion; a monitoring team was appointed under her aegis (composed of representatives of the competent authorities and NGOs); and the programme (which was supposed to end in 2009) was extended until 2013. The Plenipotentiary has also informed ECRI of a number of recent initiatives: coordination of Government action to implement EU law, curbing football fans' violence<sup>21</sup>, appointment of equality coordinators<sup>22</sup>, organising training and publications. NGOs and other authorities have pointed out that the division of labour between the Government Plenipotentiary for Equal Treatment and some ministries is not always clear.
40. ECRI considers that the decision to appoint the Government Plenipotentiary for Equal Treatment is, in principle, commendable. Of course, it understands that the creation of new institutions quite often gives rise to issues of competence, which need to be solved. As concerns work against racism and racial discrimination, the Plenipotentiary has shown ability to take interesting initiatives and appears determined to try and maximise the impact of the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance. Naturally, many of these initiatives are very recent and, therefore, difficult to evaluate. ECRI would, nevertheless, like to encourage the authorities to study carefully the contribution that any new set of officials, like the equality coordinators, can be expected to make to the fight against racism and racial discrimination; if it can be clearly demonstrated that such coordinators are needed, they should be endowed with a clear mandate which would distinguish their role from that of minority plenipotentiaries<sup>23</sup>.
41. ECRI recommends that the evaluation of the results of the first part (2004-2009) of the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance be completed as soon as possible. Then concrete and measurable targets should be established for the second part (2010-2013). Moreover, ECRI recommends that the authorities carefully assess the need for equality coordinators, taking into account the competence of minority plenipotentiaries.

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<sup>21</sup> See Climate of opinion, public discourse and opinion leaders/sports.

<sup>22</sup> Under the EU-funded "Equal Treatment as a standard of good governance" project.

<sup>23</sup> See Vulnerable groups/Roma.

## Training for members of the judiciary and law-enforcement authorities

42. In its third report, ECRI recommended training for members of the judiciary and law-enforcement authorities on racism and racial discrimination (and the provision of sufficient funds for this purpose).
43. ECRI is pleased to note that since its third report the authorities have organised numerous training sessions for the above-mentioned target groups on issues coming within ECRI's mandate. These were either specialised courses on racism and racial discrimination or general ones on human rights or aliens law. Some were organised together with ODHIR and UNHCR with the involvement of NGOs. One particularly interesting course was held for police officers and Roma representatives in Tarnow. Finally, human-rights plenipotentiaries have been appointed, *inter alia*, to assist the central and regional (at voivodeship level) police authorities and the police schools with training.
44. ECRI considers that the effort invested into training members of the judiciary and law-enforcement authorities on racism and racial discrimination should be sustained, especially since it appears that some racially motivated offences still go unpunished.
45. ECRI recommends that training on racism and racial discrimination continue to be organised for members of the judiciary and law enforcement authorities. The Commissioner for Civil-Rights Protection, the Government Plenipotentiary for Equal Treatment, competent international organisations and NGOs as well as minority members themselves should be involved therein.

## II. Discrimination in Various Fields

### Education

46. In its third report, ECRI recommended that access to education for asylum-seekers in reception centres should be improved. It also recommended that the authorities should ensure that Roma children had equal opportunities in education and that they should shut down all separate Roma classes.
47. ECRI notes that *de facto* discrimination has been reported to exist in Polish schools affecting mostly Roma and non-citizen pupils. For example, an NGO representative informed ECRI that a teacher had to be fired for not treating Roma children with respect. Moreover, the UNHCR has noted difficulties in 2008 in schools serving newly<sup>24</sup> established reception centres<sup>25</sup> (where asylum-seekers - but also, in some cases, refugees and protected persons<sup>26</sup> - are housed). ECRI notes, nevertheless, with satisfaction that progress has been made in the field of education in so far as both these categories of pupils are concerned.
48. Thus, the separate classes for Roma children are being phased out. The very few that will remain until 2010-2011 are attended by children who - the authorities contend - would not fit in mainstream classes because of their advanced age. In any event, no new pupils are enrolled in the separate classes. Roma assistants have been recruited to facilitate the integration of Roma children in the education system and help their parents in their dealings with the school authorities; they are elected by the Roma community; although they receive training, they are not required to have a specific academic background. Moreover, Roma children often have the benefit of extra tuition to overcome any difficulties they may have.

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<sup>24</sup> The UNHCR notes that in other schools the attitude of educators has improved through awareness-raising.

<sup>25</sup> Non-citizens may be housed in reception, guarded or arrest-for-deportation centres.

<sup>26</sup> For an explanation of the different statuses, see Vulnerable groups/Non-citizens.

49. Both initiatives, which undoubtedly constitute good practices, form part of the Programme for the Benefit of the Roma Community in Poland<sup>27</sup>. They are funded via a special subsidy for schools with Roma children - the relevant appropriations belonging to the Ministry of National Education and the Ministry of Internal Affairs and Administration. Free schoolbooks are also provided to Roma pupils, while a number of scholarships is available<sup>28</sup>.
50. These efforts notwithstanding, many Roma children are unable to benefit from the education system fully; they underachieve or simply drop out. A figure of over 50% non-attendance of compulsory-schooling facilities by Roma children has been cited<sup>29</sup>. According to all those interviewed by the ECRI delegation, an effort needs to be made to persuade Roma parents of the value of education and to ensure attendance by Roma children of pre-school facilities<sup>30</sup>; the latter will enable them to overcome the difficulties associated with lack of knowledge of the Polish language.
51. Roma representatives have pointed out that Roma children who have emigrated from Poland together with their parents attend school regularly in the other EU countries that have received them. According to them, this constitutes proof of Roma parents' belief in education as a means of advancement in societies that hold out real hope for their children. As regards pre-school facilities, it has come to ECRI's attention that Roma families sometimes live in villages where there are none. This has led the Roma community in Czarna Gora to set up its own kindergarten where activities are conducted in the local Romani dialect.
52. ECRI notes in this connection, that Poland has recently undertaken under the Language Charter, *inter alia*, to make available pre-school, primary and secondary education in Romani and to teach this language as an integral part of the technical-and-vocational-education curriculum<sup>31</sup>. However, for the moment there does not appear to be demand for education in Romani (although a request to this effect could have been formulated by Roma parents under the 2005 Act).
53. In Tarnow the ECRI delegation visited the Centre for Roma Culture in Poland. One of the numerous activities it organises is after-hours tuition in English for children. This and the Czarna Gora kindergarten are important initiatives which must be commended because they originate from the community itself and show belief in the opportunities afforded by education.
54. ECRI recommends that the authorities continue their efforts to support Roma-children education. Concretely, ECRI recommends that the Ministry of National Education set an ambitious target for increasing Roma children's attendance of nursery schools in the next two years (through the creation of facilities or increased attendance of existing facilities).
55. In so far as non-citizens are concerned, ECRI notes with satisfaction that third-country nationals are no longer obliged to pay school fees for upper secondary-education. This is an important measure eliminating discrimination on grounds of

<sup>27</sup> See Vulnerable groups/Roma.

<sup>28</sup> NGOs have drawn ECRI's attention to the fact that, sometimes, there are delays in their payment.

<sup>29</sup> It has been pointed out that the law provides for penalties against parents whose children do not attend compulsory-schooling facilities. However, the fines imposed are not collected because of the financial situation of the persons concerned.

<sup>30</sup> The authorities have informed ECRI that, under a decree adopted by the Minister of National Education on 27 May 2009, pre-school education can take forms other than the traditional kindergarten, better suited to Roma parents' expectations and their traditions and culture. Moreover, as from 2011 it will be compulsory for all children in Poland to attend pre-school for a year.

<sup>31</sup> Other Language Charter undertakings concern university education; on this see Vulnerable groups/Roma.

nationality. ECRI, moreover, notes that non-citizen pupils are already or will soon be provided with special support, similar to that for the Roma: extra tuition, often intended to cover lacunae in their knowledge of the Polish language, and teaching assistants to liaise with the pupils and their families (often specially selected because of their belonging to the relevant ethnic group). The system of subsidised school-places is again used.

56. Special arrangements have been made for asylum-seeker, refugee and protected children in reception centres. Social workers there have long striven to raise their compulsory-schooling-facilities attendance-rate. Currently it is very satisfactory at 98%<sup>32</sup>. Those attending school are provided with free books. Moreover, many - but not all - such centres have pre-school facilities.
57. On the authorities' own account, the picture appears more nuanced concerning children who belong to the three above-mentioned categories and who are outside or move between reception centres. Parents sometimes neglect their education, despite the existence of material incentives, such as food at school. ECRI considers that increased efforts should be made in this connection. It regrets that it was not able to discuss the issue with the Ministry of Labour and Social Policy, which is also responsible for these groups' social care outside the reception centres.
58. Another area where improvements might be called for is non-citizen children in guarded centres<sup>33</sup>. According to several NGOs, quite often these children do not attend school. ECRI understands that the authorities might be confronted with difficulties in making adequate arrangements for this category. These children's situation is different from that of children in correctional establishments, the latter being a larger population perhaps of a less transient nature. However, education is a fundamental right to be enjoyed by nationals and non-nationals alike. ECRI is, of course, aware that these children are treated differently primarily because they are deprived of their liberty<sup>34</sup>. However, ECRI believes that the authorities should look for practicable solutions to ensure that this factor does not take on disproportionate weight. Providing courses within the centre by fully qualified personnel has been shown to be a viable option.
59. Finally, as regards the schooling situation of immigrants in an illegal situation ECRI notes that all non-citizens enjoy the right to education.
60. ECRI recommends that the authorities take steps to ensure the same compulsory-schooling-facilities attendance-rate for citizens and non-citizens, irrespective of their residence status. Wherever children in guarded centres are not provided with education, the authorities should take immediate action to remedy the situation. Moreover, ECRI recommends that access to pre-school facilities be given to all families in reception centres (either by creating additional such facilities or by relocating the families who have no such access). Finally, ECRI recommends that the authorities continue their efforts to provide non-citizen children with special assistance.

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<sup>32</sup> Compared to 93% for all non-citizens.

<sup>33</sup> According to the law, there can be no children in arrest-for-deportation centres.

<sup>34</sup> ECRI will deal with the question of whether children should be kept in guarded centres in another chapter of this report.

## Employment

61. The transposition of the EU anti-discrimination directives has been a long-standing issue in Poland. As already seen, a new draft bill - currently pending before the Council of Ministers - has been prepared to this effect by the Ministry of Labour and Social Policy.
62. However, the authorities have assured ECRI that national law already provides full protection against discrimination in employment<sup>35</sup>. Moreover, ECRI has received information about the successful prosecution of a mayor who had forbidden access to the marketplace for non-citizen sales-people, despite the fact that the latter had obtained the required permits and been complying with the relevant obligations. As regards areas for improvement, ECRI's attention has been drawn to cases of discrimination against Roma job-seekers and the need for enhanced vocational training for refugees and protected persons<sup>36</sup> (an issue that ECRI has not been able to discuss with the Ministry of Labour and Social Policy).
63. ECRI has already made recommendations concerning the anti-discrimination legislation, training for those who have to apply it and remedies for potential victims. ECRI hopes that increased awareness of the relevant procedures and confidence therein will result in progress in the field of racial discrimination in employment.
64. In addition, ECRI considers that increased use should be made of situation-testing to gauge the extent of the problems faced in the particular field by vulnerable groups such as the Roma. It also considers that the authorities should conduct a fresh assessment of vocational-training possibilities for refugees and protected persons.
65. Finally, ECRI notes that measures to improve Roma employment prospects have been taken under the Programme for the Benefit of the Roma Community in Poland, which will be discussed under Vulnerable groups, below.
66. ECRI recommends that increased use be made of situation-testing to gauge the extent of the problems faced in the particular field by vulnerable groups such as the Roma. It also recommends that the authorities conduct a fresh assessment of vocational-training possibilities for refugees and protected persons.

## Housing

67. ECRI has received reports of discrimination targeting non-citizens in the field of housing. ECRI again expresses hope that the situation will improve through increased use of existing remedies, when victims acquire confidence in the relevant procedures.
68. As it has done in connection with employment, ECRI recommends recourse to situation-testing to gauge the extent of racial discrimination in housing.
69. Few seem to contest that many Roma communities' housing situation leaves a lot to be desired - to the extent that the Malopolska Voivodeship had to take the extraordinary step of suspending the destruction of illegal buildings pending the finding of suitable accommodation for the families occupying them. ECRI recalls that the right to a home is one of the major issues covered by the Programme for

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<sup>35</sup> The Labour Code's most recent amendment took effect on 18 January 2009.

<sup>36</sup> Positive measures might be called for in respect of these two categories of third-country nationals on the ground that they might not have been able to draw the benefit of social-policy measures taken for the benefit of Polish citizens.

the Benefit of the Roma Community in Poland. It appears that it is also a particularly sensitive one: the implementation of the programme's relevant part has attracted significant criticism on the part of Roma NGOs (unwieldy procurement procedures, initiatives lacking in focus and recalcitrant mayors); the authorities also complain that sometimes their efforts in this connection have been thwarted by lack of cooperation on the part of the beneficiaries (e.g. short-lived improvements<sup>37</sup>); finally, some initiatives have run aground due to objective factors (town-planning and land-registry issues).

70. In so far as the last issue is concerned, ECRI sees in the Programme for the Benefit of the Roma Community in Poland a good opportunity to address the issue of illegal settlements globally. The authorities should use the significant funds available to provide all interested Roma families with adequate housing. To achieve this, they might have to take the exceptional step of regularising some buildings (while respecting all interested parties' human rights). Once this has been done, the authorities will be able to send a clear message to all interested parties to ensure respect for the law.
71. The question of recalcitrant mayors is a general one and will be discussed in the part concerning the Programme for the Benefit of the Roma Community in Poland. As for the various cooperation issues arising in municipalities that wish to implement the programme, ECRI considers that these call for increased dialogue between the authorities and local community-leaders.
72. ECRI recommends that the authorities seize the opportunity of the Programme for the Benefit of the Roma Community in Poland to solve in a durable manner the question of illegal Roma settlements.
73. Finally, ECRI has been apprised of the practical difficulties encountered by those on integration allowance in their search for accommodation. It appears that refugees and protected persons can only receive the allowance after their departure from the reception centres; they need to provide, for this purpose, a permanent address. However, quite often, in order to obtain an address, they need to rent property. This they cannot do, since they have no money for the advance/deposit. ECRI considers that the authorities should take speedy action to resolve this matter. They may, for example, wish to consider making, upon special request, a provisional one-off payment before the recipient's departure from the reception centre (without necessarily entering his/her name on the beneficiaries' definitive list).
74. ECRI recommends that the authorities find a solution to the problem of refugees and protected persons who cannot rent accommodation because they have not yet started receiving the integration allowance (as a result of their inability to provide a permanent address).

## Health

75. ECRI notes that, similarly to the areas of education, employment and housing, in health as well those primarily affected by racial discrimination appear to be Roma and non-citizens.
76. According to information received by ECRI, many Roma are afflicted by the general problems encountered in the field of health by those living in remote villages and/or belonging to the low-income segments of the population. In addition, the authorities contend that some Roma communities are confronted with specific health-issues. ECRI is pleased to note that action to overcome these difficulties has been taken under the Programme for the Benefit of the Roma

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<sup>37</sup> The authorities have reacted to this by changing the nature of the assistance provided.

Community in Poland with free medical consultations<sup>38</sup> and professionals, called “health visitors”, offering targeted assistance and advice (among others to women and families)<sup>39</sup>.

77. As regards non-citizens, ECRI’s attention has been drawn to complaints concerning health care in reception centres<sup>40</sup> and compulsory screening for AIDS for those wishing to be admitted there. For the authorities, most complaints concerning health care in the reception centres are related to communication problems; asylum-seekers who do not wish to be tested for AIDS are free not to. ECRI considers that the reception centres are the only realistic option for many asylum-seekers. It notes, in this connection, UNHCR’s position that (*de facto* or *de jure*) compulsory screening for AIDS for asylum-seekers is not in accordance with international standards. ECRI takes note of the assurances received by the authorities that asylum-seekers can be admitted in a reception centre even if they have refused to undergo the AIDS test. ECRI also invites the competent authorities to conduct a detailed survey of health care in reception centres to identify the source of the related complaints.
78. Finally, ECRI notes that immigrants in an illegal situation cannot be brought within the country’s social-security system, not even through voluntary affiliation. They have access to health care by paying on an *ad hoc* basis. The issues concerning this group will be addressed under Vulnerable groups/Non-citizens.
79. ECRI recommends that the authorities conduct a detailed survey of health care in reception centres to identify the source of the related complaints.

### **Access to services and goods**

80. It would appear that civil servants do not always treat respectfully low-income persons, some of who are Roma. Moreover, sometimes the Roma experience discrimination when trying to gain access to goods and services offered in the private sector, although significant progress has been achieved in this field with the country’s economic development. ECRI stresses again the need to strengthen confidence in the complaints mechanisms.
81. ECRI recommends the use of situation-testing to gauge the extent of racial discrimination in the field of access to services and goods in the public and private sectors.

### **III. Climate of opinion, public discourse and opinion leaders**

82. In its third report, ECRI addressed a number of recommendations in connection with the climate of opinion, public discourse and opinion leaders: (i) informing Polish society about the negative effects of racial discrimination (ii) alerting the media to the dangers of racism and intolerance (iii) prosecuting racist offences committed by the press (iv) encouraging debate among media professionals about their role in fighting antisemitism (v) raising the majority population’s awareness of historical minorities’ cultural identity – including that of the Roma (vi) giving high priority to the fight against antisemitism (vii) encouraging

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<sup>38</sup> In 2008 the Programme for the Benefit of the Roma Community in Poland financed 40 days of free medical consultation (of which 10 in the Zachodniopomorskie Voivodeship and 10 in the Dolnoslaskie Voivodeship).

<sup>39</sup> The number of “health visitors” employed under the Programme for the Benefit of the Roma Community in Poland has increased from 6 in 2005 to 35 in 2008. Eight are employed by the Dolnoslaskie Voivodeship; the rest in another 7 voivodeships. On average, there is one health visitor per 35 Roma; in Mazowieckie Voivodeship the ratio is 1:5.

<sup>40</sup> Health care is a major issue for Chechens, many of whom suffer from psychological trauma having fled a warzone.

politicians and opinion leaders to take a firm public stand against antisemitism (viii) introducing anti-racist education into the school curriculum, including content on antisemitism (ix) promoting learning about Jewish history and the positive contribution of Jewish persons, communities and culture to Polish society (x) awareness-raising about the situation of refugees and asylum-seekers as well as non-citizens' contribution to Polish culture and society and (xi) promoting tolerant attitudes vis-à-vis Roma and non-citizens.

83. Issues related to education and campaigns targeting society at large will be addressed under awareness-raising. Although this is an issue related to the climate of opinion, it will be discussed in a separate chapter at the end of the report when all the detailed aspects of the fight against racism and racial discrimination will have been presented.

### **Climate of opinion**

84. Since the end of the Second World War, Poland has been an ethnically very homogeneous country. Moreover, the vast majority of its citizens belong to the Catholic Church. Sociological research shows that, nevertheless, minorities are increasingly accepted. In addition, the general attitude towards non-citizens and immigrants is benevolent, as the ECRI delegation has been assured by all those it interviewed, including representatives of the interested groups themselves. That having been stated, research also suggests that social acceptance does not necessarily mean absence of discriminatory attitudes.
85. For ECRI a particularly worrying aspect of the climate of opinion is the persistent interest of part of the population in the ethnic origin of major or even minor historical figures, current political leaders and authors/columnists who did not/do not identify themselves as minority members (or who do not necessarily wish openly to identify themselves as such). Sometimes this interest evolves into speculation and enters the public domain. It could focus on persons who simply express an opinion. The implication is that these people should not be trusted.
86. This can be taken as one manifestation of nationalism, which can in some circumstances take on an ugly hue. Moreover, nationalism is often associated with antisemitism, which - ECRI notes with concern - persists in Poland. This is all the more serious, since - as it has been explained to ECRI - it provides the basis on which other intolerant attitudes can be built. According to sociological research, its nature is changing from religious to secondary antisemitism (the latter having to do with, for example, perceptions concerning the abuse of feelings of guilt and reparations) and a belief in Jewish conspiracy (a "concept" bound to resurface in times of economic crisis). Legitimate concerns have also been expressed about attempts to transform the public discourse on privatisation or the Middle East conflict<sup>41</sup> into anti-Jewish propaganda.
87. Other historical minorities and some groups of non-citizens also consider that they are subject to stereotyping. Some of these stereotypes are old (for example against Russians), while others are new (including those concerning Muslims). ECRI notes that surveys have been conducted into the question of stereotypes concerning some communities (for example, the Roma) and encourages further research into this question.

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<sup>41</sup> During the recent Gaza-strip conflict protesters employed rather pernicious discourse in front of the Israeli Embassy.



## Political discourse

88. As regards political discourse, ECRI notes the existence in Poland of openly antisemitic parties: Polish National Rebirth and the Polish National Party. However, their importance is marginal. In so far as mainstream politics are concerned, ECRI recognises the importance of recent changes in Poland's party landscape. The influence of those that had gone as far as to exploit anti-Jewish feelings during the last electoral campaign and some of their allies has considerably waned.
89. As regards parties with continued popular appeal, ECRI understands that many minority members, for historical reasons, do not fully trust those that do not have a pure "democratic citizenship" platform. (Such a platform would insist on "citizens" rather than "the nation", the basis for the former's allegiance to a democratic state being respect for their rights.) Minorities' fears are naturally exacerbated when party leaders tacitly accept antisemitic attitudes harboured by lesser party members or affiliates. These find expression in statements stressing that Auschwitz was not a death camp or (unsuccessful) protests against local initiatives to name streets or community centres after Jewish personalities.
90. ECRI wishes to draw attention to the dangers of such forbearance and recalls, in this connection, the Charter of European political parties for a non-racist society<sup>42</sup>. However, ECRI is also satisfied to note that, in everyone's account, significant progress has been made at the political level towards recognising minorities' rightful place in Poland. This is not only linked to the above-mentioned decline of some formerly mainstream parties. Positive - often highly symbolic - steps have been taken by many political leaders, including the Prime minister and - most importantly - the country's President, to stress the country's inclusive character.
91. ECRI welcomes these developments. It also welcomes the fact that the prosecution service has taken action against openly antisemitic political statements, which has already resulted in a criminal conviction. Finally, ECRI is satisfied with the response given - at Government, party and Parliament level - to a particularly disturbing incident involving an opposition MP reacting to the election of the current US President with comments about "the end of white man's civilisation".
92. ECRI has already made a recommendation concerning the rigorous application of criminal law.
93. ECRI recommends that the authorities continue to stress Poland's inclusive character. Moreover, it recommends that intolerant political statements be met with the appropriate response by all public officials concerned.

## Media, including the internet, and publications

94. ECRI has learned with satisfaction of the closing down of a bookstore selling antisemitic literature to which it had made reference in its previous report. However, ECRI notes with concern that antisemitic literature and newspapers continue to be sold openly in kiosks in Warsaw and elsewhere. Some of these belong to the publicly-owned distribution company "Ruch". This not only affects the climate of opinion in a negative manner; it also lends an aura of legitimacy and impunity to those seeking to spread an antisemitic message. The authorities should investigate whether the authors of these publications are liable to criminal prosecution and exert their influence on the distribution company to curb the dissemination of such material.

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<sup>42</sup> Adopted on 28 February 1998.

95. Concern has been repeatedly expressed to ECRI about the activities of Radio Maria and related media in Poland (belonging to a Catholic organisation). This has to do, *inter alia*, with the manner in which they present the history of Polish Jews and their relations with the majority. Although many agree that recently there have been less openly antisemitic remarks by these media's commentators, ECRI knows of at least two alarming incidents (concerning "the holocaust industry" and "the brazen promotion of Jewish culture and point of view") since the publication of its last report. Moreover, nobody appears to contest that antisemitic remarks are frequently made by members of the audience calling in, from which these media's commentators sometimes fail to disassociate themselves.
96. ECRI has been apprised that the National Broadcasting Council has conducted an inquiry into Radio Maria and related media and has found no problem. Although the council in question operates a complaints mechanism, recently it has had to deal with only one racial-discrimination case involving a pun on one football club's name and the word "Jew". The council took action on this matter. In ECRI's view, the dearth of complaints concerning matters related to racism and intolerance<sup>43</sup> could reflect lack of confidence in the complaints mechanism or lack of awareness of its existence.
97. ECRI recommends that the National Broadcasting Council show increased vigilance concerning racism within its field of competence. Moreover, ECRI urges the Council to raise public awareness about the existence of the complaints mechanism through targeted information and advertising campaigns.
98. Of course, ECRI does not exclude that there will be cases involving broadcasting that will call for a stricter response. ECRI has already made a recommendation concerning the rigorous application of criminal law (by the competent criminal-justice authorities) which is again of relevance for this point.
99. ECRI notes that public TV has recently gone through a major leadership crisis resulting from the appointment at its head of a person who had in the past expressed antisemitic views. This crisis has been resolved with this person's replacement.
100. ECRI recommends a more effective screening process for high public-sector appointments that would avoid hiring persons who have not publicly and convincingly disassociated themselves from past racist statements.
101. ECRI notes that, on all accounts, racism<sup>44</sup> on the internet is on the rise in Poland<sup>44</sup>. One particularly worrying incident involved a serious attack on a person whose personal details had been published on a list of antifascist activists on a neo-Nazi website. Criminal proceedings were instituted against those running the site<sup>45</sup> and it was closed down. When it started operating again from the US, the competent Polish authorities sought their American counterparts' assistance and managed to have it closed down again. Other sites, however, based in foreign countries - including the US - continue to provide racist content in Polish and are accessible from Poland. The authorities consider that their leeway for action is limited in this respect. They invoke problems of international cooperation related to divergencies in the criminal legislation of the countries concerned.

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<sup>43</sup> The number of complaints about all matters within the Council's competence has been increasing steadily: from 999 in 2007 to 1132 in 2008 and 1591 in 2009.

<sup>44</sup> According to the authorities, 12 cases of racially motivated offences allegedly committed on the internet were referred to the courts in 2006, 19 in 2007 and 28 in 2008.

<sup>45</sup> Also against those who physically carried out the attack.

102. ECRI considers that law-enforcement resources for the fight against racism on the Internet should be increased, in accordance with its General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet. As the neo-Nazi website incident illustrates, effective action can already be taken in some of the cases which have an international dimension. As already observed, ratifying the Additional Protocol to the Cybercrime Convention would enhance the potential for international cooperation in this connection.
103. ECRI recommends that there be an increase in law-enforcement resources for the fight against racism on the Internet.
104. Finally, ECRI has been informed of an incident in which the ethnic origin of the defendants was stressed in reports concerning a prominent criminal case. ECRI recognises the dangers involved in reporting of this nature. In its view, this incident could be symptomatic of continued lack of awareness among media professionals of the dangers of racism.
105. ECRI recommends that the authorities take appropriate action to ensure that reports on criminal cases do not disclose the ethnic origin, religion, language or nationality of the accused unless these are directly relevant. It also recommends that the authorities continue alerting the media to the dangers of racism.

### **Opinion leaders**

106. ECRI has already commented on politicians' responsibility for stressing Poland's inclusive character. ECRI also notes that the leadership of the Catholic Church has on several occasions taken a public stance in favour of good inter-faith relations. Moreover, a large part of the clergy has distanced itself from the Radio Maria media-group. However, some Catholic-Church premises have been used in a controversy about a book on the relations between Jews and ethnic Poles in the 40s; the side that has used the churches has had recourse to antisemitic rhetoric.
107. ECRI wishes to stress the Catholic Church's obvious opinion-leader role. It considers that the latter could use its influence to a larger degree than it has done so far to bring about further religious reconciliation in Poland - building on the unique contribution made to this cause by one of the most revered Polish figures, Pope John-Paul II. The authorities have a forum for raising the issue with the Catholic Church: the Joint Commission of the Government and the Polish Episcopate.
108. ECRI recommends that the authorities raise within the Joint Commission of the Government and the Polish Episcopate the issue of the Catholic Church's opinion-leader role in the fight against racism.

### **Sport**

109. ECRI is aware that racism among football fans is a major problem in Poland. There have been several incidents involving serious insults to Black players. Antisemitism is also rampant - although, quite interestingly, it is not directed against particular individuals. Thus, the term "Jew" is used to taunt the fans of rival teams, independently of their religion. Quite often, open death threats are addressed to "the Jews" with crude references to the gas chambers.

110. ECRI notes that the Polish Football Association - the competent professional authority - has banned such practices. There are self-regulatory mechanisms that can be used to have offensive signs and flags<sup>46</sup> removed from the stadiums and chants stopped<sup>47</sup>. Moreover, the police conduct preventive programmes. High-profile events have also been organised with the help of the Government Plenipotentiary for Equal Treatment and NGOs to raise awareness about the risks of racism in sport. These include the conference “No to racism in sports” which was concluded with the signing by 44 sports associations (out of a total of 68) of a declaration referring, *inter alia*, to ECRI’s General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport.
111. ECRI has already made a recommendation concerning criminal offences in stadiums. As regards self-regulatory measures, it considers that the Polish Football Association should be encouraged to develop, together with the football clubs, a code of conduct that would address, *inter alia*, the issue of fans’ racism. This would supplement the current rules, its obvious advantage lying in the consensual process of adoption which creates ownership. Moreover, ECRI considers that the authorities should step up their efforts to raise awareness.
112. ECRI recommends that the authorities encourage the Polish Football Association to develop, together with the football clubs, a code of conduct that would address, *inter alia*, the issue of fans’ racism. Moreover, the authorities should step up their efforts to raise awareness about the dangers of racism in sport.

#### IV. Racist Violence

113. Poland is not confronted with a particular racist-violence problem. However, since the last ECRI report, there have been incidents that have received considerable coverage, notably the physical assault of the chief rabbi in May 2006 and that of a 19-year-old American Orthodox Jew in Warka in May 2008. In both cases the culprits were punished, while in the former the President of the Republic apologised and the Prime minister declared that there was no place for antisemitism in the country.
114. Two other instances of violence are noteworthy because, although effective action was eventually taken, the authorities had initially denied their racial or neo-Nazi character. These involved the serious wounding, in July 2006, of a Moroccan citizen who had just performed a play on his experience as a non-national in Poland and, in May 2006, of the person on the neo-Nazi web site list mentioned above. Moreover, ECRI has been informed of attacks on dark-skinned students in Warsaw and Bialystok to which civil society and the university authorities reacted promptly and effectively calling on authorities to take action. Finally, ECRI has been notified of attacks on Muslims in Bialystok and Roma in Nowy Sacz<sup>48</sup>.

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<sup>46</sup> Booklets have been distributed to help those concerned identify such signs and flags.

<sup>47</sup> Since 2008 the Council for Safety at Sports Events, a coordination governmental body, works on prevention strategies.

<sup>48</sup> For Roma complaints about police brutality see Conduct of law-enforcement officials.

115. The above are examples of cases involving violence against persons<sup>49</sup>. To these one should add instances of destruction of and/or interference with religious sites. These concern most religious minorities, primarily the Jewish but also the Muslim and the Orthodox Christian, as well as Catholic sites. Although there have been convictions, the representatives of some of the groups in question feel that the law-enforcement authorities do not always pursue these property-cases as actively as they should.
116. In ECRI's view, the above complaints notwithstanding, the authorities have shown that they are, in principle, capable of taking effective action in cases involving both sites and persons. They must be encouraged in this direction. ECRI, however, hastens to add that all the above violence-against-the-person cases concerned citizens or non-citizens with residence permits. Concern has been expressed as to whether those without a permit would come forward to complain to the authorities about violence of which they might have been victims. ECRI has already made recommendations about the rigorous application of criminal law and assistance to victims which are of direct relevance to the points discussed above.

## **V. Vulnerable/Target Groups**

### **Historical minorities in general**

117. In its third report, ECRI recommended that the authorities should pursue their efforts in support of national and ethnic minorities. It also addressed a recommendation concerning awareness-raising (to which allusion has already been made) and one on effective action to prevent, and protect against, intolerance.
118. ECRI notes with satisfaction that, since its last report, Poland has made significant progress in the field of the protection of historical minorities with the adoption of the 2005 Act. The latter provides for a series of positive measures, designed to enable them to maintain their distinct identity. It also provides for a consultative body, competent in the matter, the Joint Commission of the Government and National and Ethnic Minorities (Joint Commission), which started functioning on 21 September 2005.
119. ECRI is aware that the distinction made in the 2005 Act between national and ethnic minorities may give rise to problems<sup>50</sup>. The same holds true for the distinction between the above-mentioned protected groups and protected regional languages - of which there is only one, the Kashub. Moreover, ECRI's attention has been drawn to claims for extending the list of protected groups - to include the Silesians. ECRI hopes that the authorities will revisit the scope of application of the 2005 Act to examine whether adjustments are called for. This examination should be conducted in association with the representatives of the groups claiming protection/additional protection.
120. Other historical minorities' complaints that ECRI has been informed of concern (i) stereotypes<sup>51</sup>, (ii) issues particular to two groups whose situation will be examined in detail below: the Jews and Roma, (iii) threats, (iv) airtime and (v) the

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<sup>49</sup> As already observed, Poland collects statistics on racially motivated offences. These, however, provide limited guidance for the report's chapter on racial violence because of a technical issue. In ECRI's fourth-cycle reports, this chapter concerns, *inter alia*, attacks against the person but not threats. However, the Polish Criminal Code takes a different approach (of course, equally valid); its Article 119 concerns violence and threats on the basis of national, ethnic or religious affiliation.

<sup>50</sup> For one example see the chapter of Constitutional and other fundamental provisions.

<sup>51</sup> See Climate of opinion, public discourse and opinion leaders/Climate of opinion.

obsolete legislation governing the Muslim community (*inter alia*, requiring its members to pray for the authorities and fixing the seat of their religious leader in Vilnius). Some minorities with kin states consider that part of their problem lies in the reciprocity approach sometimes adopted in practice by some local-authorities. ECRI invites the authorities to address all the above questions. It is, of course, clear that criminal law provides an appropriate response to the issue of threats. It is also clear that the law on the Muslim community must be immediately scrapped. Although it is not enforced, it conveys a discriminatory message. ECRI welcomes, therefore, the Government's initiative to set up – together with the Muslim Religious Union – a panel, which will draft a new act on the relations between the two.

121. ECRI also notes the progress made with the restitution of property to historical minority institutions<sup>52</sup>. It welcomes the constructive approach adopted in this field by the authorities and the representatives of the minorities concerned. It hopes that a similar approach will be adopted to the question of the impending census<sup>53</sup>.
122. Finally, ECRI takes note of the significant contribution that the Commission for National and Ethnic Minorities of the Sejm (Poland's "lower" House of Parliament) has made towards the improvement of the situation of the groups coming within its remit. It wishes to commend the Commission for its work.
123. ECRI recommends that the authorities revisit the scope of application of the 2005 Act on National and Ethnic Minorities and the Regional Language to examine whether adjustments are called for. This examination should be conducted in association with the representatives of the groups claiming protection/additional protection. It also recommends that the law on the Muslim community be immediately scrapped. Finally, it recommends that the authorities continue working with the representatives of historical minorities on the question of restitution of property to their institutions and in the examination of the remaining complaints mentioned above.

## **Jews**

124. The third report's main recommendations concerning the Jewish community have already been summarised in the chapter on Climate of opinion, public discourse and opinion leaders. In addition to these, the third report contained recommendations on the effective application of the law by appropriately trained police officers, prosecutors and judges and on providing support to relevant NGOs.
125. In the present report, ECRI has already addressed some aspects of antisemitism in the chapters concerning (i) Criminal law (ii) Climate of opinion, public discourse and opinion leaders (iii) Racist violence and (iv) Vulnerable groups/Historical minorities in general<sup>54</sup>. Other antisemitic events that ECRI has been informed of involved insults against rabbis (two cases) and groups of non-citizens of Jewish origin visiting Polish sites. In addition, extremist organisations often target Jews when demonstrating and disciplinary action has been taken on one occasion concerning the reaction of the police to such an event. The question of instances of desecration aside (also discussed in the part concerning historical minorities in general), in some cities there is widespread antisemitic graffiti. ECRI has also been informed that Jewish cemeteries and other sites in the countryside are often neglected.

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<sup>52</sup> ECRI has received detailed information about the Malopolska Voivodeship's efforts in this connection, which are commendable.

<sup>53</sup> See Monitoring.

<sup>54</sup> To the extent that the Jewish community, similarly with other historical minorities, is subject to threats.

126. ECRI understands that, in these circumstances, the Jewish community in Poland feels vulnerable. Of course, ECRI is aware and fully supports the various efforts taken at political and law-enforcement level to fight antisemitism, which should be a central part of the fight against racism in Poland. ECRI is particularly satisfied to learn that initiatives to get rid of antisemitic graffiti have been launched by schoolchildren with the encouragement of the President of the Republic.
127. In addition to fighting antisemitism, the authorities have taken active steps to support Jewish culture. Some monuments have been restored and institutions created. Moreover, between 2008 and 2010, the authorities subsidised, with approximately 2,800,000 PLN, Jewish organisations, periodicals, artistic events, concert, knowledge competitions for young persons and the production of CDs<sup>55</sup>. Most people agree that today Poland has become again an important centre of Jewish culture to be enjoyed by its citizens, residents and visitors. ECRI considers this to be a positive development and encourages the authorities in their efforts in this direction.
128. On the issue of remembrance, ECRI notes that the authorities consider that there is no gap in Holocaust education, while some activists continue to campaign for further support in this connection.
129. ECRI recommends that the authorities continue their active engagement against antisemitism and in support of Jewish culture, with the assistance of the media and civil society, including the Catholic Church. It invites them to seek guidance in this connection from its General Policy Recommendation No. 9 on the fight against antisemitism

## Roma

130. In its third report, ECRI recommended that the authorities (i) study the impact of discrimination on the Roma community (ii) organise a system of legal assistance for it and (iii) cooperate with and support relevant NGOs. It also recommended an integrated strategy in favour of Roma which should be developed with the participation of the community concerned and be properly explained to all segments of Polish society. Finally, it addressed the recommendations on education and awareness-raising examined in other chapters.
131. ECRI recalls that the various problems encountered by the members of the Roma community, many of who live in conditions of poverty and social exclusion, are explained under the relevant headings in the chapter on Racial discrimination in various fields as well as in the chapters concerning Climate of opinion, public discourse and opinion leaders and Conduct of law-enforcement authorities. In this part of the report ECRI will discuss whether an effective response to the problems in question can be provided by the Programme for the Benefit of the Roma Community in Poland.
132. ECRI notes that the programme in question, which comes on the heels of a pilot one concerning the Malopolska Voivodeship, is of a ten-year duration: 2004-2013. The budget officially allocated to it amounts to 100,000,000 PLN; however, this sum is supplemented by EU funds and other appropriations<sup>56</sup>. It comes within the responsibility of the Ministry of Internal Affairs and Administration and covers the following fields: education, living and social conditions, health care, employment, security (combating racially motivated offences against the Roma),

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<sup>55</sup> It is indicative of the positive climate that the number of rabbis (who now count among their number one who is Polish-born) has increased.

<sup>56</sup> ECRI was, for example, informed that the Malopolska Voivodeship used 5 different sources for financing the actions it took in favour of the Roma community.

the promotion and preservation of Roma culture and identity, raising awareness about the Roma community and civic education of the Roma.

133. ECRI considers that the Programme for the Benefit of the Roma Community in Poland is a major development, which ought to have an impact on the conditions of the beneficiary community, not only because of the amount of money involved but also because of the authorities<sup>57</sup> serious intentions as regards planning, implementation and follow-up<sup>58</sup>. Moreover, ECRI notes with approval the Roma community's involvement in it. The Roma Group of the Joint Commission, also hosted in the Ministry of Internal Affairs and Administration, plays a major consultative role in connection with the programme. Roma NGOs, which receive training to this effect, submit many projects (30% of those approved). Moreover, the local authorities and voivodeships consult the Roma regularly on projects they initiate.
134. ECRI notes the following interesting initiatives that are of relevance for the Programme for the Benefit of the Roma Community in Poland: the voivodeship minority plenipotentiaries<sup>59</sup> and specially tasked employees in municipalities (as in Tarnow), reference persons for the Roma community within the police force and joint police-Roma training sessions<sup>60</sup> (again in Tarnow), health visitors<sup>61</sup> as well as the Tarnow Ethnographic Museum and a post-graduate course on Roma culture in Cracow.
135. On the question of legal assistance, ECRI notes that the Programme for the Benefit of the Roma Community in Poland provides funds to this effect to the Civic Counselling Centres and NGOs. The Roma community has a distinct preference for getting advice from the latter.
136. While welcoming the Programme for the Benefit of the Roma Community in Poland, ECRI should also register the criticism that Roma NGOs have expressed about it. A larger share of the programme should be allocated to them; there has been misuse of funds<sup>62</sup>; they do not receive adequate information; and there are significant differences in its implementation between local authorities. This is a point echoed by civil society at large. ECRI's attention has also been drawn to problems related to the evaluation of the results of the programme (in which trained Roma could provide help to researchers) and the insufficient number of NGOs that provide legal assistance.
137. The differences in the implementation of the programme between local authorities are ECRI's main concern. ECRI understands that, in a decentralised system such as Poland's, it was logical to give responsibility for the Programme for the Benefit of the Roma Community in Poland to local authorities which are closer to the problems it is meant to address. However, the Ministry of Internal Affairs and Administration should have anticipated that some mayors would be reluctant to implement it (or parts of it). Therefore, it should have put in place formal tools to be able to convince them.

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<sup>57</sup> The ECRI delegation had the chance to discuss these aspects with the central authorities, the Malopolska Voivodeship and the City of Tarnow.

<sup>58</sup> For adjustments to the programme see above under Racial discrimination in various fields/Housing. For audit issues see below.

<sup>59</sup> They are competent for monitoring the discharging of state obligations vis-à-vis minorities and to support minorities' initiatives.

<sup>60</sup> See above under Training for members of the judiciary and law-enforcement authorities

<sup>61</sup> See also above under Racial discrimination in various fields/Health.

<sup>62</sup> See also above under Racial discrimination in various fields/Housing.



138. In addition, ECRI considers that greater effort should be made to encourage Roma NGOs to submit additional viable projects for the programme. As regards the misuse of funds, ECRI notes that the authorities have expressed determination to fight against all such instances whatever the source<sup>63</sup>. Although ECRI believes that it is still early to evaluate the results of the Programme for the Benefit of the Roma Community in Poland, it encourages authorities to examine NGO suggestions about increased involvement of Roma. Finally, ECRI considers that the authorities' approach to the question of acceptance of the Programme for the Benefit of the Roma Community in Poland by the broader public might be unduly defensive<sup>64</sup>. In its opinion, the authorities should focus their attention on explaining to the majority the programme's benefits for social cohesion.

139. ECRI recommends that the authorities continue implementing the Programme for the Benefit of the Roma Community in Poland. They should continue providing training to Roma NGOs wishing to submit projects thereunder. Voivodeships should follow closely the number and nature of projects submitted by each mayor within their jurisdiction. The Programme for the Benefit of the Roma Community in Poland should be properly explained to all segments of Polish society. ECRI invites the authorities to take on board its General Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies.

### Non-citizens

140. In its third report, ECRI recommended an integration policy for refugees, economic migrants and persons with tolerated status. Moreover, ECRI recommended that (i) detention should be used as a last resort against non-citizens in an illegal situation (ii) the living conditions should be improved in detention centres (iii) information should be made available to non-citizens, including those in detention centres, about their rights in a language they understood (iv) the problems of persons with "tolerated status" should be solved and (v) staff who came in contact with refugees and asylum-seekers should be trained in human rights and the fight against racism and racial discrimination, while appropriate training should also be provided to officials who come into contact with immigrants in their work. Finally, ECRI recommended that the authorities should study other organisations' recommendations concerning the need to change legislation and practice concerning refugees, asylum-seekers and persons with tolerated status<sup>65</sup>.

#### - *Negative reactions to the setting up of reception centres*

141. ECRI has already noted that the general climate of opinion is not hostile to non-citizens. Moreover, civil society has taken a firm stance in cases involving violent incidents against them. However, there have been negative reactions to proposals to set up, in certain areas, new reception centres for refugees and asylum-seekers. These reactions reveal xenophobic tendencies.

142. ECRI recommends that there be information campaigns to explain to the local population the impact of setting up reception centres.

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<sup>63</sup> The Malopolska authorities informed ECRI's delegation that effective action had been taken in a case involving misuse by an NGO and that the money had been recovered. Another case concerning alleged misuse of funds by the authorities in another voivodeship - brought to ECRI's attention by Roma representatives - was under investigation at the time of the ECRI delegation's visit.

<sup>64</sup> In reply to a question to this effect, it was explained to the ECRI delegation that different funds - not all of them earmarked - were used.

<sup>65</sup> For awareness-raising recommendations see Climate of opinion, public discourse and opinion leaders. For a recommendation on access to education for asylum-seekers see Racial discrimination in various fields/Education.

- *Integration*

143. As regards non-citizens' integration, ECRI notes that positive measures have been taken. Under recently adopted legislation, most of those who would formerly qualify for tolerated status are granted subsidiary protection (they become protected persons). As a result, many non-citizens already present in Poland have been given the same benefits as refugees. The new tolerated-status category mostly concerns those who cannot be expelled for administrative reasons (for example, problems of identification<sup>66</sup>). Those with tolerated status do not receive specific integration assistance. However, they can work.
144. ECRI notes that an integration allowance is paid to refugees and protected persons for a period of twelve months (for those in reception or guarded centres starting from their departure therefrom). During this period, voivodeships are also supposed to provide refugees and protected persons with additional assistance in the form of, *inter alia*, language and vocational training. NGOs and the beneficiaries themselves consider that the twelve months' period is not long enough. Moreover, the practice of voivodeships in this field is very varied, some not providing any vocational training whatsoever. NGOs and the beneficiaries also consider that the amount of language training offered is inadequate. The general impression is that the situation will deteriorate as a result of the above-mentioned recent legislative reform. While the number of beneficiaries has increased (now that protected persons have become entitled to integration assistance), that of staff remains the same. ECRI considers that the manner in which care for non-citizens is organised can provide an indication of how friendly, and ultimately tolerant, the state is in their respect.
145. ECRI assumes that, given the staff shortages, the problem of adequate information on non-citizens' rights identified in the third report has not been fully solved either<sup>67</sup>.
146. ECRI recommends that the authorities examine the question of extending the period of integration assistance. They should also make sure that beneficiaries receive adequate vocational and linguistic training in all voivodeships. Finally, they should ensure that all voivodeships have adequate staff to deal with the social care of refugees and protected persons and inform non-citizens of their rights.

- *Administrative procedures concerning status, residence and work permits*

147. ECRI has been assured, on the one hand, that Poland operates adequate refugee-recognition procedures<sup>68</sup>. On the other, ECRI has received information to the effect that tolerated persons face bureaucratic (and, according to some, legal) difficulties in having their status officially recognised. Those who are successful face additional difficulties in having their residence cards renewed. According to the same information, non-citizens are, in general, confronted with difficulties in their dealings with voivodeship staff responsible for their residence and work permits. It has been reported that the latter are often inexperienced (due to high turnover) and lack the necessary linguistic skills.

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<sup>66</sup> This is a major issue for Vietnamese citizens.

<sup>67</sup> ECRI has been informed that the authorities, with the help of NGOs, make such information available in some foreign languages in reception and guarded centres. However, some non-citizens from the Russian Federation are wrongly assumed to speak Russian.

<sup>68</sup> To claim free legal assistance, asylum-seekers have to rely on general administrative law. A bill that would contain special provisions for them was under preparation at the time of the drafting of this report.

148. ECRI recommends that the authorities should examine the complaints concerning granting tolerated status and residence and work permits to non-citizens and conduct an audit of the relevant procedures to ascertain where difficulties arise and, if so, what are the principal causes. ECRI also reiterates its recommendation that staff responsible for non-citizens be given adequate training.

- *Reception and guarded centres*

149. As regards the situation in reception and guarded centres, ECRI has already made recommendations concerning education and health. According to those interviewed by ECRI, today the main problem is understaffing. However, it cannot be excluded that the centres' holding capacity might be tested by a fresh wave of asylum-seekers similar to that experienced when Poland was about to become part of the Schengen area. (At the time of the ECRI delegation's visit, the system was already being put to the test as a result of arrivals from Georgia.)

150. ECRI recommends that the reception and guarded centres be endowed with adequate staff.

151. The question of the training of the staff also deserves attention. Under Racial discrimination in various fields/Health, ECRI has already discussed communication problems. It follows that the third-report recommendation about special training for staff who come in contact with refugees and asylum-seekers has not lost its topicality.

152. ECRI recommends again that staff coming in contact with refugees and asylum-seekers be trained in human rights and the fight against racism and racial discrimination.

- *Non-citizens in an illegal situation*

153. ECRI is aware of recent changes that were meant to facilitate non-citizens' legal employment (reduced work-permit application fees, seasonal employment). However, the fundamental premise of the system has not changed: work permits may only be issued in respect of employment with a particular employer. This has been cited as one of the factors that may have resulted in most non-citizens working illegally in Poland (these include Russians, Ukrainians and Armenians). The social rights of this - on all accounts - rather sizeable category of persons are inevitably significantly less well protected than the social rights of those in regular employment. Their health-cover situation, discussed above, is just one example.

154. ECRI notes that Poland has tried on several occasions to regularise the situation of these persons some of who have been living in the country for long periods of time facing chronic problems. However, the regularisation conditions were reportedly difficult to satisfy. According to information received by ECRI, a new attempt may be made in 2010. ECRI considers that persons who have remained in the country for a considerable period of time should be given the chance to integrate fully.

155. ECRI invites the authorities to consider adapting the new regularisation conditions to the needs of those who have developed real links with the country, because of their family situation or their length of stay.

156. This would, of course, be without prejudice to the authorities' right to pursue the immigration policy of their choice in the future. Having stated that, ECRI recalls that policies focusing exclusively on control have had limited impact so far, given

the number of non-citizens in an illegal situation to be found in the country. ECRI is, as a result, of the opinion that the authorities should consider experimenting with additional tools, such as those in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families<sup>69</sup>, by extending the enjoyment of certain social rights to all non-citizens and by giving them a real possibility to exercise other such rights they might already have under national law, the authorities would remove the “competitive advantage” of employing persons in an illegal situation. At the same time they would ensure non-discrimination and tolerance in society.

- *Detention of non-citizens in an illegal situation and asylum-seekers*

157. ECRI has been informed that many non-citizens in an illegal situation are kept in detention for the maximum period of time, which continues to be 12 months<sup>70</sup>, because of problems of identification preventing their expulsion. ECRI’s attention has also been drawn to the fact that some persons belonging to this category are allegedly not provided, upon their departure from the arrest-for-deportation centre, with a release certificate; they also encounter difficulties in obtaining tolerated status; as a result, they are liable to be rearrested. Such practices would be blatantly illegal.<sup>71</sup> ECRI recalls that detention should pursue a legitimate objective, which in this case is ensuring expulsion. When expulsion is impossible, detention is no longer justified.

158. ECRI has also been informed that children seeking asylum are kept in guarded centres, usually because their parents have committed minor offences. ECRI considers that the very fact that children are deprived of their liberty because of their parents’ behaviour is problematic.

159. ECRI recommends to the authorities not to detain non-citizens in an illegal situation who cannot be expelled. It also recommends to the authorities not to keep children seeking asylum in guarded centres because of their parents’ behaviour.

## **VI. Conduct of law-enforcement officials**

160. In its third report, ECRI recommended additional measures to ensure that the police did not engage in misconduct against members of minority groups and the establishment of an independent complaints-mechanism. It also recommended recruiting more members of minority groups in the police force and the appointment of mediators belonging to the same groups.

161. ECRI continues to receive information about law-enforcement officials’ misconduct targeting, *inter alios*, the Roma, and racial profiling. At the same time, ECRI notes that some ground has been covered towards developing the capacity of the Ombudsman’s Office to process relevant complaints (without, however, granting it additional resources)<sup>72</sup>. The human-rights plenipotentiaries will also become competent for monitoring how the police react to complaints addressed to them.

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<sup>69</sup> A recommendation has been addressed concerning the ratification of this Convention earlier on in the report.

<sup>70</sup> Non-citizens are detained on the basis of renewable court orders which always concern specific periods of time.

<sup>71</sup> See Supreme Court’s judgment of 27 September 2007.

<sup>72</sup> It has been pointed out to ECRI on behalf of the Ombudsman that establishing within his Office a fully fledged independent complaints-mechanism might involve a change in his institutional role.

162. As regards minority representation within the police, ECRI notes that a Roma policewoman is employed in Tarnow since a long time. ECRI considers that further confidence-building is called for and this is an issue for both the police and the Roma community. Measures have been taken in this direction in Tarnow (joint police-Roma training, appointment of a reference person within the police), which need to be evaluated; if the results are positive, these experiments should be replicated elsewhere in the country. In so far as the appointment of mediators is concerned, ECRI considers that this issue should be revisited when the human-rights-plenipotentiaries programme will have been fully assessed.
163. ECRI recommends the setting up of an independent mechanism for the examination of complaints against law-enforcement officials. It also recommends again that members of minority groups be recruited in the police force. It draws the authorities' attention in this connection to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

## VII. Monitoring Racism and Racial Discrimination

164. In its third report, ECRI recommended a coherent and comprehensive data collection system to assess the situation of the various minority groups and the scale of racism and racial discrimination.
165. ECRI notes that the forthcoming census will result in the collection of data relevant for its mandate. ECRI has already expressed hope that the census will be prepared and conducted in cooperation with representatives of minority groups. This will improve the quality of the information and bestow legitimacy on the process - these being aspects in respect of which the previous 2002 census had been criticised<sup>73</sup>.
166. The data collected through a one-off census will not, however, suffice for the authorities to be able to monitor racial discrimination in the various fields mentioned above. To achieve this, a different system is required whereby each authority monitors, on a regular basis, the performance of each minority group within its field of competence. Arguably this is something that national law, as it stands today, allows no room for. ECRI considers that the authorities should review their position on this matter and allow for the systematic collection of disaggregated data. As it has repeatedly observed, the collection of such data need not present a threat for human rights if the principles of anonymity, informed consent and voluntary self-identification are respected. For as long as the official general position remains unchanged<sup>74</sup>, ECRI considers that the authorities should enhance their capacity to collect racial-discrimination data on the basis of the complaints each one of them receives on this matter.
167. As regards statistics concerning racially motivated offences, ECRI notes that the authorities operate four separate systems. The Ministry of Justice collects general statistics on all criminal acts processed through the judicial system. The police have their own general system, which covers all alleged offences brought to their attention. Moreover, a specially tasked official in the National Prosecutor's Office collects statistics on racially motivated offences<sup>75</sup>. In addition, a monitoring unit in the Ministry of Internal Affairs and Administration follows and studies racist incidents - relying on official and unofficial sources (for example, press reports).

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<sup>73</sup> ECRI, therefore, welcomes the information received from the authorities that the census was discussed at the 11<sup>th</sup> and 17<sup>th</sup> meetings of the Joint Commission.

<sup>74</sup> ECRI has taken note of information provided by the authorities to the effect that work for improving the collection of statistics on racial discrimination, xenophobia and related intolerance is being planned as part of the relevant National Programme.

<sup>75</sup> See chapter on Criminal law.

ECRI considers that the latter unit has a lot of potential in studying racism in its ministry's field of competence and proposing concrete action in this connection. However, ECRI considers that the authorities should integrate their statistics systems to achieve synergy and avoid the risk of discrepancies. ECRI, therefore, welcomes the information received by the authorities that an inter-ministerial team of law-enforcement and justice statistics has been set up.

168. ECRI recommends that the authorities cooperate closely with the representatives of minority groups in the preparation and conduct of the impending census. It also recommends that they systematically collect disaggregated ethnic data in accordance with the principles of anonymity, informed consent and voluntary self-identification. In this connection, ECRI refers to its General Policy Recommendation No. 1 on combating racism, xenophobia, antisemitism and intolerance. Pending the adoption of such a comprehensive system, the authorities should exploit, for data-collection purposes, the racial-discrimination complaints each one of them receives. Finally, ECRI recommends that the authorities integrate their systems for collecting statistics on racially motivated offences.

### **VIII. Education and awareness-raising**

169. In its third report, ECRI addressed a number of recommendations in connection with education and awareness-raising, which have been summarised elsewhere.

170. In the preceding chapters ECRI has discussed various initiatives for training officials dealing with racially motivated offences and vulnerable groups. It has also recommended awareness-raising for media professionals and in the field of football. Moreover, it has referred to Holocaust education and initiatives taken by schoolchildren, with the support of the President of the Republic, against antisemitic graffiti.

171. ECRI recalls the importance of impressing on each successive young generation the unique character and meaning of the Shoah. This is why events organised in Poland, such as the March of the Living<sup>76</sup>, have the capacity to appeal to every person in the world and are to be commended.

172. Other noteworthy initiatives are, first, the introduction in the school curriculum of a non-compulsory module on minorities' contribution to Polish society and, secondly, increased emphasis on human-rights education<sup>77</sup>.

173. Given what has been discussed above, action at schools should be strengthened and supplemented by action addressed to society at large. The Racial Discrimination, Xenophobia and Related Intolerance Programme and the recent creation of the institution of the Government Plenipotentiary for Equal Treatment present unique opportunities in this regard. The Plenipotentiary could use the programme mechanism to unite the efforts of the authorities, civil society and minority groups behind a large-scale campaign for tolerance. High-profile events, with the involvement of the President of the Republic, stressing the links between the school world and society - such as the anti-graffiti drive - could form part of it.

174. ECRI recommends, in accordance with its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education, that the authorities strengthen their efforts to eradicate racism by action addressed to children at school. It also recommends a large-scale campaign for tolerance addressed to society at large.

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<sup>76</sup> An event that takes place also in Israel.

<sup>77</sup> The Compass manual has been successfully used in this connection.

## INTERIM FOLLOW-UP RECOMMENDATIONS

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

- ECRI recommends that the Government present comprehensive legislation against discrimination, drawing inspiration from its General Policy Recommendation No. 7, to Parliament as soon as possible. Responsibility for this legislative initiative should rest with a single Governmental entity, which should consult NGOs.
- ECRI recommends that the authorities ensure that an independent body is entrusted with all the powers which the specialised body for combating racism and racial discrimination should have under General Policy Recommendations No. 2 and 7.
- ECRI recommends that the authorities encourage the Polish Football Association to develop, together with the football clubs, a code of conduct that would address, *inter alia*, the issue of fans' racism. Moreover, the authorities should step up their efforts to raise awareness about the dangers of racism in sport.

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





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## **APPENDIX: GOVERNMENT'S VIEWPOINT**

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

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Poland on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 18 December 2009, date of the examination of the first draft).

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



## Comments by Polish authorities concerning the “Draft Fourth Report on Poland” of the European Commission Against Racism and Intolerance (ECRI)

The Republic of Poland appreciates constructive dialog with ECRI, as well as experience and professional knowledge of its experts who visited Poland in September 2009. The visit of ECRI rapporteurs was a significant contribution to the process of application of measures aimed at combating racism, racial discrimination and intolerance in Poland. Polish authorities are devoted to meet the recommendations of ECRI and fulfill the objectives to which Council of Europe attaches its long-term attention while combating racism and intolerance. Those are also values shared by the Republic of Poland.

These are the comments of Polish authorities to particular parts of the ECRI’s Report:

### Re. Summary

According to Polish authorities, the 2<sup>nd</sup> paragraph on page 7 should include information that the Joint Commission of the Government and National and Ethnic Minorities started its operations on 21 September 2005.

The information in the same paragraph that separate classes for Roma children are being phased out should take into account the fact that the final phasing out is expected to take place in the school year 2010/2011.

Polish authorities wish to point out that the statement included in the 3<sup>rd</sup> sentence of the 6<sup>th</sup> paragraph on page 7 concerning the influential media group owned by a certain Catholic organization is extremely general and not supported by any evidence. Taking into account the fact that the principle of freedom of speech is legally recognized in Poland, it should be emphasized that it is impossible to apply preventive censorship with respect to programmes of any broadcasting entity. At the same time, persons who feel harmed or hurt by the content of a given programme may either lodge a complaint with a relevant public administration body or take legal action. In case the prosecutor’s office receives an information about an offence of the so-called hate speech, appropriate *ex officio* proceedings are launched.

Likewise, the information on page 7 in the 6<sup>th</sup> paragraph is imprecise. According to Polish authorities, information that the number of complaints submitted to the Ombudsman and the National Broadcasting Council is “disproportionately low” which, according to the authors of the Report, seems to prove that persons affected by the manifestation of racism and xenophobia are unwilling to report the circumstances of that kind to the relevant authorities, is not supported by any evidence. Argumentation concerning the low number of complaints may just as well imply that incidents of racist and xenophobic nature were simply infrequent.

According to Polish authorities, the statement included in the last but one sentence of the 6<sup>th</sup> paragraph on page 7 that the activities of the extreme rightist organizations continue unabated does not reflect last developments on the domestic level. On the 12<sup>th</sup> October 2009, the District Court in Opole delegalized a right wing organization - the Radical National Camp - Brzeg. In the justification of the sentence, it was stated that the freedom to establish associations is not unlimited and establishing groups voicing racial hatred is prohibited. The judgment become final on 3 November 2009.

According to Polish authorities, the 1<sup>st</sup> paragraph on page 8 should read in a way suggesting that a lower rate of attendance of Roma children in compulsory-schooling facilities in comparison to the attendance of non-Roma children is disturbing.

The claim included in the 1<sup>st</sup> paragraph on page 8 stating that complaints are also lodged by other historical minorities should also include information concerning the type of complaints and which minorities have lodged them.

According to Polish authorities, the claim included in the 5th paragraph on page 8 requires some explanation. In view of the historical context, the phrase that “the question of illegal Roma settlements should be solved in [an efficient and] durable manner” may be inappropriately interpreted by the readers. It is the intention of Polish authorities to effectively and durably support the activities of local self-governments aimed at regulating the legal status of land on which Roma settlements are located, as well as the activities aimed at improving the housing situation of the Roma living in these settlements. Such an attitude of the authorities stems from the legal status of land on which Roma settlements are located in Poland. Most frequently, the land is not owned by the Roma. The plots of land on which the settlements are located are owned, among others, by their non-Roma neighbours and very often the owners are unknown. Such a situation makes it impossible to legally start construction work financed from the State budget. That is why procedures aimed at regulating the legal status of the land on which the Roma houses are situated are financed under the *Programme for the Benefit of the Roma Community in Poland*. In view of the exceptional housing situation of the Roma who live in the settlements in the Małopolska region, housing containers (temporary housing units) for which building permits are not required were also purchased under the *Programme*. That is why the authorities wish to demonstrate that “solving the question of illegal Roma settlements” in Poland is a matter of dual action: first, the problem of regulating the legal status of the land and second, the construction of new houses or the renovation of the existing ones, depending on the needs. The postulate of the Commission included in the 2<sup>nd</sup> paragraph on page 8 suggesting that the Voivodship authorities should follow closely the number and nature of projects submitted by the mayors under the *Programme for the Benefit of the Roma Community in Poland* which should be properly explained to all segments of the Polish society is impossible to implement, because territorial self-government units are not controlled by the State administration. Therefore, in the opinion of Polish authorities, what is only possible is to recommend that the Voivodes who play an important role in the process of assessing and implementing tasks under the *Programme for the Benefit of the Roma Community in Poland* pay attention to the necessity of providing society at large with extensive information on the activities and results of the *Programme*.

Also the statement included in the 2<sup>nd</sup> sentence of the 6<sup>th</sup> paragraph on page 8 that the National Broadcasting Council should show increased vigilance concerning racism is not convincing for the Polish authorities. The increasing number of complaints lodged with the National Broadcasting Council (999 complaints in 2007, 1132 complaints in 2008, 1591 complaints in 2009) is a proof that it is a body enjoying social confidence and is perceived by the citizens as an appropriate body for examining controversial issues, also those relating to national minorities.

#### **Re. item 13 and 14**

According to Polish authorities, the recommendation relating to the introduction of a rule rendering the racial motivation of the offence an aggravating circumstance under the criminal law does not seem to be justified. Creating a case-law list of aggravating circumstances (what would logically follow is a creation of a similar list of mitigating circumstances) is contrary to the Polish legislative practice which assumes that the criminal law norms be construed in a general and abstract manner. Bearing in mind the multiplicity and diversity of factual circumstances covered by the criminal law norms, as well as the multiplicity and diversity of potential



motivation of perpetrators of offensive actions, one can hardly imagine the possibility of creating an exhaustive or even approximately exhaustive list of such circumstances.

Under the Polish criminal law, the court not only may, but is obliged to take into account racist motivation of the perpetrated offence, following the detailed sentencing directives referred to in Article 53 § 2 of the Criminal Code. Sentencing directives expressly the motivation of perpetrators' actions or omissions as one of the circumstances affecting the severity of the sentence. The aggravating nature of such a motivation is evidenced by the fact that racist motivation of an offence constitutes a distinguishing feature of certain types of offences defined in the specific section of the Criminal Code [CC] - Article 119 § 1 and 2 CC and Article 257 CC.<sup>1</sup>

The Report's argument in favour of introducing racist motivation of the perpetrated offence as an aggravating circumstance, related to a claim that the provision of Article 53 § 2 CC does include one specific directive concerning the sentence, namely joint perpetration of an offence with a juvenile, should be deemed incorrect, because the circumstance is not related to the realm of motivation and therefore it does not affect the extent of the perpetrator's guilt, but it is related to the social harmfulness of the act, the inevitable consequence of which (apart from other negative consequences) is also the demoralization of the juvenile.

**Re. item 47.**

Attention should be drawn to an excessively far-reaching claim "that de facto discrimination has been reported to exist in Polish schools affecting mostly Roma [...] pupils" which should be clarified in a more precise way by ECRI - an example of improper treatment of a pupil by a teacher need not have been ethnically motivated; what is more, even if it did happen, the fact that the teacher was dismissed from his job is an evidence of an outright reaction to an instance of discrimination, i.e. it contradicts the general argument included in the first sentence.

**Re. item 48.**

According to the authorities, the paragraph should include an information that currently the so-called "Roma classes" are to be found only in two schools in Poland and they are attended by children who, as the authorities claim, due to their age should be taught at a higher level of education. It should be stressed that the classes shall be ultimately phased out in the school year 2010/2011.

**Re. item 50.**

According to the authorities, the information that in Nowy Sącz it is reputedly difficult to encounter any person of Roma nationality who would have completed the second or third grade of primary school is not based on reliable data. An opposite conclusion is supported, among others, by data from Nowy Sącz City Hall. (see attach. 1)

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<sup>1</sup> Article 119 § 1. Whoever uses violence or makes unlawful threats toward a group of persons or a particular individual because of their national, ethnic, racial, political, or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same penalty applies to whoever publicly instigates the perpetration of the offence specified in § 1.

**Article 257.** Whoever publicly insults a group of people or an individual person because of their national, ethnic, racial or religious affiliation or because of the lack of religious beliefs or for these reasons violates bodily integrity of another person shall be subject to the penalty of the deprivation of liberty for a term up to 3 years.

**Re. item 70.**

Comments by Polish authorities relating to paragraph 5 on page 8 of the Summary remain in force.

**Re. item 72.**

Comments by Polish authorities relating to paragraph 5 on page 8 of the Summary remain in force. In that context, Polish authorities interpret the Commission's recommendation as asking them to take advantage of the opportunity offered by the *Programme for the Benefit of the Roma Community in Poland*, in order to find a durable solution of the question of Roma settlements with non-regulated legal status of the land on which they are located.

**Re. items 85 and 86.**

Arguments included in items 85 and 86 were not supported by ECRI with any concrete evidence or references to source materials. Polish authorities have no information about the existence of any independent studies that might have formed the basis for ECRI's claims.

**Re. item 94.**

The prosecutor's offices take steps towards prosecuting perpetrators of the so-called hate speech offences (Article 256 CC and Article 257 CC)<sup>2</sup> in print (books, newspapers) and electronic media (radio, television) in each case they are informed about such incidents. In view of the freedom of expression, it is impossible to control each publication in terms of the compliance of its content with the existing law in Poland. Yet in the case the prosecutor's office is informed of such facts, the relevant measures are undertaken.

**Re. 96-97**

According to the authorities, the claim that a small number of complaints lodged at the National Broadcasting Council [KRRiTV] reflects a low degree of social confidence in the complaint and appeal mechanism or the lack of awareness of its existence is not convincing for the Polish authorities. The experience of the National Broadcasting Council indicates the opposite situation is true, the Council receives an increasing number of complaints each year (999 complaints in 2007, 1132 complaints in 2008, 1591 complaints in 2009).

**Re. item 109**

Polish authorities wish to draw attention to the fact that the Polish Football Association reacts to all cases of racism in the stadiums by, for instance, imposing fines on clubs whose fans show racist behaviour towards black players. Pseudo-fans may also be brought to justice for behaviour inciting racial hatred.

**Re. item 110**

Polish authorities wish to say that among other initiatives aimed at combating racism in sport in which the Government Plenipotentiary for Equal Status is involved, the "Let's kick racism out of stadiums" campaign and the "Red Card to Racism" charity initiative have been launched.

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<sup>2</sup> **Article 256.** One who openly propagates fascist or other totalitarian political system or incites to hate based on nationality, ethnic background, race, belief or because of lack of belief, is to be fined, restrained or imprisoned up to 2 years.

**Art. 257.** Whoever publicly insults a group of people or an individual person because of their national, ethnic, racial or religious affiliation or because of the lack of religious beliefs or for these reasons violates bodily integrity of another person shall be subject to the penalty of the deprivation of liberty for a term up to 3 years.

**Re. 114**

The case of assault and battery, in July 2006, of a citizen of Morocco ended with an indictment against the perpetrators and with respect to one of the perpetrators it was determined that his action was motivated by the racial affiliation of the victim. The perpetrator was accused of an act under Article 159 CC and Article 119 § 1 CC in relation to Article 11 § 2 CC<sup>3</sup>, and afterwards convicted by the court. It should be noted that in the course of the proceedings, one of its goals is to determine the motives and motivation of the perpetrator's actions. In order to reach such a conclusion, a series of legal procedures has to be followed. Only the result of such legal procedures may demonstrate a specific motive of the perpetrator's action. This was also the case in these proceedings. The legal procedures proved that the perpetrator was motivated by the racial affiliation of the victim. The circumstance was reflected in the qualification of the act for which he was accused and for which he was subsequently convicted (Article 119 § 1 CC).

As regards cases of assault on black students in Warsaw and Białystok, one should point out that those incidents were reported to the prosecuting authorities only after they had been publicized by the media. Earlier, the prosecuting authorities were not informed by the victims about such incidents and therefore the authorities could not have reacted with "adequate" speed and identified the perpetrators of those acts.

**Re. item 119.**

The argument raised in the item that the distinction between national and ethnic minorities which was applied in the *Act on national and ethnic minorities and on a regional language* might be the source of problems is erroneous and unsupported by any specific examples. One should remember that, pursuant to the provision of the above mentioned Act, all regulations included in it are applicable equally to national minorities and to ethnic minorities. The distinction relating to the protection of minorities and protection of a regional language referred to in the Act are a natural result of a difference in the scope of issues under protection in each case. Protection of cultural identity of representatives of the minorities is a different matter than the need to protect the language of people whose cultural identity does not differ from the identity of the majority of citizens of the Republic of Poland.

**Re. item 120 and 123.**

According to Polish authorities a joint analysis of problematic issues relating to national and ethnic minorities and of issues concerning the members of specific religious communities is inappropriate. Moreover, referring to the reciprocity rule raised in this item which is supposedly applied by the Polish authorities with respect to national minorities, one should explicitly emphasize that the existing Polish law concerning national and ethnic minorities and day-to-day practice of institutions and offices dealing with them have not referred to and do not refer to the reciprocity rule in the treatment of national minorities in Poland and Polish minorities in the neighbouring countries or in the treatment of minorities as depending on the political relations with other countries. Any actions of that type would be inconsistent with the existing law and the policy of the Polish government. As regards the issue of

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<sup>3</sup> **Art. 159.** Whoever, taking part in a scuffle or a battery, uses a firearm, a knife or any other dangerous object, shall be subject to the penalty of the deprivation of liberty for a term of between 6 months to 8 years.

**Art. 119. § 1.** Whoever uses violence or makes unlawful threats toward a group of persons or a particular individual because of their national, ethnic, racial, political, or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

**Art. 11. § 2.** If an act bears all attributes specified in two or more provisions of the penal law, the court shall issue a sentence for one offence on the basis of all concurrent provisions.

controversial provisions of the Act dated 21 of April 1936 on *the attitude of the State towards the Muslim Religious Association in the Republic of Poland* (Journal of Laws No. 30, item 240, as amended), the authorities wish to inform that a joint team appointed by the Polish government and the authorities of the Muslim Religious Association has been working on a new bill addressing the relations between the State and this Association.

**Re. item 139.**

Taking into account the organizational structure of local authorities in Poland, the authorities cannot possibly implement ECRI's recommendation that Voivodship authorities should follow closely the number and nature of projects submitted by mayors. However, in view of the Voivodes' competences with respect to the *Programme for the Benefit of the Roma Community in Poland*, it is possible to interpret the recommendation as an obligation of the Voivodes to monitor the quality and nature of the projects from the territories under their control.

**Re. item 154.**

The information contained in this item is imprecise. Currently, changes of legal regulations relating to the status of foreigners in Poland are being developed. The question of a prospective "abolition" is one of the many solutions under analysis.

**Re. item 165.**

The status of implementation of the action plan for the 2011 census of population and housing has been regularly reported to and discussed by the Joint Commission of the Government and National and Ethnic Minorities. Issues related to the census were discussed so far during the 11<sup>th</sup> and 17<sup>th</sup> meeting of the Commission.

Attachment no. 1

Number of Roma pupils in two elementary schools in Nowy Sącz<sup>1</sup>

classes	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008	2008/2009	2009/20010
	number of pupils	number of pupils	number of pupils	number of pupils	number of pupils	number of pupils	number of pupils	number of pupils	number of pupils	number of pupils
0	10	8	4	5	8	9	9	8	5	8
I	7	1	9	1	2	6	2	3	0	3
II	6	7	4	9	1	2	7	2	4	4
III	3	4	3	2	8	4	3	6	3	5
IV	4	5	6	9	6	4	4	3	2	3
V	2	4	5	3	3	2	2	4	1	2
VI	4	1	0	4	3	3	2	2	4	2

<sup>1</sup> Data based on information from self government body.



