POLAND
Suspicion, discrimination and surveillance: the impact of counter-terrorism law and policy on racialised groups at risk of racism in Europe
Counter-terrorism has been an area of increasing global and European policy coordination. The Council of the European Union issued its first Framework Decision on Combatting Terrorism in 2002 and first adopted a counter-terrorism in 2005, as well as a Strategy for Radicalisation and Recruitment to Terrorism. The most recent 2017 Framework Directive on Combatting Terrorism requires the European Commission to submit a report by September 2021 on the Directive’s impact “on fundamental rights and freedoms, including on non-discrimination, and the rule of law”.

ENAR has examined the experiences of counter-terrorism and counter-radicalisation measures by members of groups that are at heightened risk of facing discrimination and racism in France, Germany, Hungary, Poland and Spain. Our research contributes to understanding how state policies are experienced and their impact on the exercise of fundamental rights and freedoms.

This summary identifies the key themes and emerging findings from the research in Poland and draws on:

- In-depth qualitative interviews with 5 policy makers and practitioners working in the field of counter-terrorism and national security
- In-depth qualitative interviews with 7 key actors from civil society, including those working in community organisations most impacted by security measures, and human rights organisations.
- 3 focus groups with 22 individuals from different Muslim communities
- A review of existing research literature and policy and civil society reports

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1 Council of the European Union, 14469/4/05 REV 4
2 The European Union strategy for combating radicalisation and recruitment, EU Council document 14781/1/05, 24 November 2005
The EU has been a key driver in the development of counter-terrorism legislation in Poland, with laws initially introduced as part of the process of harmonising legislation prior to Poland joining the EU. By 2015 Poland had launched its first four-year National Anti-Terrorism Plan, and in 2018 Poland’s Internal Security Agency established a Terrorism Prevention Centre of Excellence to focus on terrorism prevention. Poland has not developed counter-radicalisation policies or programmes.

The lack of a clear definition of terrorism has fuelled concern about a push towards developing pre-emptive terrorism offences. An important feature of Poland’s counter-terrorism law is the concept of ‘an offence of a terrorist nature’, first introduced in the Act of 16 April 2004. The United Nations Human Rights Committee found the concept ‘overly broad and not adequate in defining the crime’s nature and consequences’, and urged Poland to ensure that the Polish Penal Code defines such crimes narrowly and in terms of their purpose. Such concerns have not inhibited the Polish government from building upon this concept to establish a range of pre-emptive terrorism offences including public provocation of terrorism, terrorist training, and crossing the Polish border for the purpose of conducting a terrorist offence.

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5 Penal Code article 115 § 20.
7 Art. 255a. Whosoever disseminates or publicly presents content that could facilitate the commitment of an offence of a terrorist nature is punishable by three months to five years’ imprisonment.
8 Anti-Terrorism Act of 10 June 2016 Art. 32.5, modified art. 255a of the Penal Code. According to art.255a §2 a person who, aiming to commit an offence of terrorist character, participates in training that might facilitate the commission of such offence has committed an offence punishable with imprisonment up to five years. See <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000904/T/D20160904L.pdf> accessed 1 February 2021.
1. The Anti-Terrorism Act 2016

The Anti-Terrorism Act 2016 raises significant concerns about the rule of law. It affords the executive far-reaching surveillance powers with insufficient mechanism of judicial accountability. The rule of law is further undermined by the lack of clear definitions to key concepts structuring the legislation. The act gives the state extensive powers to operate when ‘events of a terrorist nature’ occur. Adam Bodnar, Polish Ombudsman, pointed out, that “an event of a terrorist nature’ is formulated in a very broad manner, without clear indication of who, and in what circumstances makes an assessment, and in what procedure ascertains that there is a threat, or a suspicion of a threat”\(^9\). Overtly broad understanding of ‘an event of terrorist nature’ may result in too broad an application of the Anti-Terrorism Act. The lack of clear and precise definitions undermines the ability to challenge any executive overreach.

In order to prevent ‘threats of a terrorist nature’ the Internal Security Agency is able collate information on activities that are identified as ‘terrorist incidents’. An ordinance, listing examples of ‘terrorist incidents’ was published on 22 July, shortly after the Anti-Terrorism Act 2016 was passed. The initial proposed ‘catalogue of terrorist incidents’ pointed towards a discriminatory focus on Muslims and Islam. The proposed list of ‘terrorist incidents’ included information about any plans of establishing in Poland Islamic universities or a prison visit by Islamic clerics or representatives of Islamic institutions and participation in chat forums on ‘radical Muslim websites’. The catalogue of ‘terrorist incidents’ reveals the extent to which Muslims and their social or religious activities are viewed as indicators of a terrorism-related threat. Although criticism of the discriminatory character of the catalogue, and the use of explicit phrases related directly to Islam or Muslims, led to their replacement in Regulation of 22 July 2016\(^10\) by terms that were more neutral on their face, such as ‘religious groups’ and ‘international extremism’; within the context of the public debate in Poland, it is clear that these phrases were only synonymous to those that were replaced.

There was a consensus among focus group respondents, that perception of terrorism in Poland and measures to counter it, are targeted at Muslims, and fear of terrorism means that ‘anything can be thrown in the name of counter-terrorism’.

2. The terrorist threat in Poland

Any evaluation of the necessity and proportionality of counter-terrorism powers and policies requires a clear understanding of the nature and extent of the threat of terrorism facing Poland. Since the passage of the 2016 legislation, government officials and ministers have made public statements on the importance of Anti-Terrorism Act 2016 in preventing terrorism. However, without independent verification, these claims are viewed with scepticism by respondents in civil society and Muslim communities.

There is no clear data on the number of arrests or the use of investigative powers in relation to terrorism. Information, from the Ministry of Justice, on the number of convictions for terrorism related offences, combines convictions for terrorism and organised crime, it is therefore impossible to know how many of the convictions actually relate to terrorism.

The National Prosecutors office were unable to provide data on proceedings concerning terrorist offences in the period 2010-18. According to data we received from the Warsaw Prosecutors office, none of the proceedings under S258 of the Penal Code taking between 2010-18 concerned terrorism. Public confidence in the necessity and proportionality of counter-terrorism powers would be enhanced by greater transparency and information sharing.

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3. Immigration and (in)security

The Anti-Terrorism Act 2016 amended the Foreigners Act 2013 (adding art. 329a), allowing government officials to issue an ‘obligation to return’ that allow for the deportation of foreign nationals where there is a ‘fear’ or suspicion that a foreign national may be involved in terrorism or espionage. Data provided by the Ministry of Interior and Administration, suggests that between 2016-2018 12 ‘obligations to return’ were issued under art. 329a11.

Since 2015, an average of 240 hundred foreign nationals a year have also been issued with an ‘obligation to return’ by border guards through powers under the Foreigners Act 2013 art. 302; these are issued on the much wider grounds that cover not only national defence and security but also public safety and the interest of the Republic of Poland.12 While the majority of such obligations to return are issued in relation to nationals of Ukraine or Belarus, lawyers working with human rights NGOs report that this power is used against nationals of Middle Eastern and North African countries as well as citizens of Russia from Chechnya. Given the broad scope of art. 302 it is not possible to say whether any of the cases were related directly to suspicion of terrorist activities.13

States have a right to remove and deport foreign nationals who pose a threat to national security. However, its action must respect the rule of law, including the right to due process. The arrest and deportation of Ameer Al-Khawlany, illustrates the challenges to the rule of law and due process in this area. Ameer is an Iraqi national, and a PhD student at Jagiellonian University in Krakow. Between October 2016 and April 2017, he was arrested and detained by an order from the Internal Security Agency, on the basis that he posed a threat to national security14. Media reports suggest that Ameer was arrested after his refusal to cooperate with the Internal Security Agency15, to provide information on immigrant and

Muslims communities in Poland16. Despite an open letter from the university staff and authorities calling for transparency and fair treatment, neither Ameer nor his lawyer were informed about the basis of his arrest, detention and deportation. Most worryingly he was deported after this arrest and detention without any further notification given to his lawyers.

The overwhelming majority of respondents were concerned by the discriminatory and racialised public discourse on immigration and the development of immigration policies aimed at deterring Muslims from coming to Poland. Public and official hostility toward Muslim immigration generates anxiety and feelings of helplessness, it also undermines integration and greater civic and social participation as people feel insecure. While this was most acute for those claiming refugee status, even those with settled status, felt their position in Poland was precarious. A Palestinian man who holds a temporary residence card, reflected on a disrupting feeling of insecurity over his future in Poland:

“I’m not an asylum seeker. I’m working, I’m paying taxes and everything. So I was thinking that okay, this is a stable place for me. But with these kinds of regulations, I know how difficult it is to have a permanent residence, how difficult it is to get a passport or citizenship (…) I don’t feel safe, because tomorrow my card will expire, after three years they’re going to tell me, ‘X we’ll not renew your card. You are not stable, and when you are not stable, you are not able to perform, to give, you know? You are under pressure”.

For some, the insecurity over their migration status, combined with a pervasive sense of being watched limits active engagement in civil society. Respondents spoke of their reluctance of taking part in demonstrations against racism or Islamophobia, fearing such participation was being monitored, would be noted on their file and held against them in any decisions on immigration.

11 MIA reserved itself time 9 July 2019 to deliver information regarding citizenship of foreigners covered by those decisions and eventually, in a followup communication refused to provide the requested data.
12 At the time of writing.
13 Interview data.
14 http://krakow.wyborcza.pl/krakow/7,44425,23265830,sad-ameer-alkhawlany-deportowany-zgodnie-z-procedura.html
15 Interviewee 1: An activist supporting refugees said during the interview that every now and then they hear that ISA contacts refugees and asks for ‘in-formal meetings’ if they refuse, they may hear that this will affect their refugee status applications.
16 https://krytykapolityczna.pl/kraj/ameer-alhawlany-aresztowany/
4. Islamophobia and racism

Most respondents felt Poland was a safe country to live in and felt welcome and safe in the areas and neighbourhoods where they lived. There were many stories of solidarity, kindness and support in interactions with Polish friends and neighbours in their everyday lives. However, alongside this positive experience, there was a sense of unease and tension, a fear that good relations were fragile and could change at any moment.

This tension was captured by one respondent who spoke of feeling safe but living in fear:

“When you are living, you feel safe, we live safe, but we live in fear. Everybody is living in fear. [...] For example, if you look at the news, if you look at the political speech, if you look that [...], we don’t want foreigners in our country – this is the political speech. [...] then you start to think: ah, if the people will listen to the government, then this speech will become action. As I told you, the government, they have this speech and they start to put in practice in terms of policies and procedures in the immigration office or for residence cards or whatever.”

The negative political, media and public discourse about Muslims and refugees, is experienced through increased incidents of Islamophobia and racism in everyday life. Fear of racism and discrimination leads to self-censorship in expressions of ‘Muslimness’ while in Poland, as well as self-policing. For example, a student explained how, while riding on the bus with some fellow Muslims, they felt that an atmosphere in the bus was ‘so tense’ that they had to get off the bus first before welcoming each other using the Arabic greeting ‘salam alaykum’. Another person mentioned how he mutes the ‘adhan’ (a call to prayer) on his smartphone application while in Poland, as the words ‘Allahu akbar’, (God is Greater) has come to symbolize terrorism and killing people.

Women who wear headscarves experience some verbal abuses or uncomfortable looks on a daily basis. A young second generation Muslim woman, when asked about her feelings of safety in the place she lives, responded:

“When I’m not wearing the headscarf, yes (I do feel safe). But when I do wear it, I try to have a positive attitude and not discern negativity in the way people look at me”.

A young Polish Muslim woman confessed that sometimes she chooses to wear a hoodie instead of a Muslim headscarf, in order not to be identified as Muslim and to protect herself from any potential incidents.

Hate crimes are rarely reported. Among some, particularly refugees, the reluctance to contact Polish police reflects fear of police that arise from experiences of persecution by security officials in their country of origin. There is also a fear that contacting the police, even as a victim of crime could result in an application for asylum or residence being rejected. Distrust of the police, rooted in experiences of unequal treatment and discrimination, was a common theme in the discussion with second generation Polish Muslims youths. By contrast older leaders in community organisations reported positive experience of their interaction with police.

5. Surveillance and citizenship

Second generation Muslim youth (who were Polish nationals) pointed especially to the use of surveillance as a counter-terrorism measure (that connect to the 2016 Anti-terrorist Act). Some individuals spoke of their pervasive sense of being under surveillance, particularly in relation to their online activities and how this led them to self-censor, for fear of being misunderstood or coming under greater scrutiny.
‘I’m trying to understand that it’s all about security and all that, but on the other hand you have to be really careful with your choice of words, so that what you say is not misinterpreted, despite the fact that I have nothing to hide…’

‘I chose to restrain myself from writing some comments on the internet, even in a joking manner. All in all, you never know where it will end up’

They also reported their parents being stopped and questioned at airports and attributed this to racial and religious profiling. These experiences of being targeted undermined their sense of belonging and citizenship.

‘I feel a bit aggrieved, because I believe I’m a decent citizen and yet I am being treated as a potential threat.’

‘I personally love Poland and I wish things would be a bit different here. I work here, I pay taxes and try to do my best for this country, as much as I can. And yet, I am being treated worse than those street hooligans.

Rather than being seen as a threat, they see themselves and their families (and particularly their fathers of a migrant background) as allies that can make a valuable contribution in addressing any threats of terrorism.

‘Because we, coming from mixed families, and living among Muslims communities, we are the one who could help the most’
The following policy recommendations were developed in dialogue with civil society organisations, policy makers and practitioners during two roundtables in Warsaw.

1. For greater transparency, the Ministry of Justice should publish an annual report on the use of counter-terrorism powers in relation to terrorism, including data on the number of proceedings, arrests and convictions.

2. When developing or reviewing counter-terrorism and counter-radicalisation policies, the government and oversight bodies must ensure engagement with a wide range of Muslim civil society organisations, reflecting and acknowledging the diversity of Muslim communities, especially women, youth and migrants.

3. The government should develop and support initiatives to increase awareness and knowledge of fundamental rights and freedoms among Muslim and minority groups impacted by counter-terrorism and counter-radicalisation measures and develop projects to monitor and document any violations of rights and freedoms they experience.

4. The government should conduct equality impact assessments on all counter-terrorism and counter-radicalisation laws and policies. These should be published so that there is an informed public discussion on the necessity and proportionality of any measures.

5. The government should develop and support initiatives to increase awareness and knowledge of fundamental rights and freedoms among Muslim and minority groups impacted by counter-terrorism and counter-radicalisation measures and hate crimes.

6. The government should establish an effective and comprehensive strategy for combatting Islamophobia as a form of anti-Muslim racism and discrimination in all areas including policing and immigration.