



european network against racism

ENAR Shadow Report 2010-2011

ENAR SHADOW REPORT

Racism and related discriminatory practices in Poland

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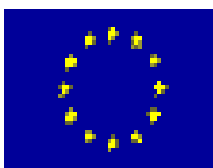
Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to offer an NGO perspective on the realities of racism with the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by the racism that is the subject of the research. It is this that gives NGO reports their added value, complementing academic and official reporting.

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I. Executive summary

Racism, xenophobia, intolerance, and discrimination constitute a problem in Poland, however, the authorities' response towards this phenomenon is not sufficient.

Migrants, including asylum seekers and refugees, remain **vulnerable** to racism and discrimination. Among ethnic and national minorities, Roma are continuously the most discriminated against group in Poland. Similar to previous years, xenophobia and intolerance still afflict Jews and Muslims, and have also increased as regards to Russians (especially after the plane crashed with the Polish President on board near Smolensk in Russia). Finally, black people, as visible minorities, are particularly vulnerable to verbal and physical abuses.

In the field of **employment**, migrants and undocumented migrants are discriminated against, abused and ill-treated by their employers. Roma still face difficulties in accessing the labour market and the unemployment rate among this group is very high (in some regions it is almost 100%).

- Groups vulnerable to racism and discrimination should be provided with knowledge and information on their rights and the obligations of employers.

Migrants, refugees, and the Roma face difficulties in access to **housing**. Those who have little or no income cannot rent a flat and the council housing system in Poland does not meet the existing needs. Furthermore, intolerance and negative attitudes from potential landlords towards refugees from Chechnya are listed as the main factors causing homelessness among this group.

- The authorities should develop a special social programme aiming at assisting homeless refugees and migrants.

The right to free **education** for children under the age of 18, guaranteed by the Constitution, is not fully respected. In general, the Polish education system is weak in adapting to the realities of a multicultural environment.

- The education system in Poland should adapt to the multi-religious and multicultural environment.

Similar to previous years the cultural specificities and the special needs of asylum seekers and refugees were ignored during visits to hospitals and doctors appointments.

- The authorities should develop a special programme aiming at facilitating communication between physicians and their foreign patients. An interpreter should be present, in particular if a foreign patient's command of the Polish language is limited.

In regard to **criminal justice**, there was a number of crimes motivated by racism. Moreover, racism in football constitutes a challenge, in particular in relation to EURO 2012, which Poland is co-hosting.

- Poland should create a system of free legal assistance to victims of racism and discrimination.
- An independent survey on ethnic profiling by the police and law enforcement agencies should be prepared.

In regard to **access to goods and services**, for the first time, in March 2011, situation tests (*testy dyskryminacyjne* in Polish) took place in Poland. White and black testers looking alike, behaving the same way and wearing similar clothes visited 8 popular night clubs in Warsaw. The results confirmed that some groups face discrimination in access to services and goods.¹

- Situation tests should be repeated each year, ideally in cooperation with municipal authorities and state bodies responsible for anti-discrimination and equal treatment.

As in previous years, Polish authorities have not managed to deal with anti-Semitism and xenophobia in some areas of the mass **media**. The Internet remains the main platform where racist-related content is published almost every day. The latest research on the racist and xenophobic comments posted on the Internet has shown that hate speech targets in particular Jews, Muslims, homosexuals, Russian and Germans.²

- The authorities should tackle the problem of the media broadcasting and publishing xenophobic reports or articles.

Anti-Semite slogans and posters still remain a problem and the desecration of property belonging to religious and ethnic minorities is common. Racism in football stadiums continues to be a challenge for the state authorities and football clubs.

- The authorities and sport clubs should deal with racism in sport more effectively.

In regard to **political and legal developments in anti-racism and anti-discrimination**, in December 2010, the Parliament voted for the act on the transposition of certain European Union provisions in the field of equal treatment.³ The act entered into force in January 2011. NGOs, however, are rather sceptical about this legislation.

The Government Plenipotentiary for Equal Treatment, appointed in 2008, was severely criticised by NGOs during 2010, mainly for a lack of knowledge on

¹ Press release available at: <http://www.interwencjaprawna.pl/docs/press-release-noc-testow.pdf>, accessed 31 August 2011.

² This research is further elaborated in chapter XI.

³ Journal of Laws of 2010, No 245, item 1700 (*Ustawa z dnia 3 grudnia 2010 roku o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania*).

discrimination and for controversial comments and statements made. On the other hand, the Ombudsman who was appointed as a special equality body (in accordance with the act on equal treatment) has not been provided with additional financial resources to tackle tasks related to anti-discrimination.

- The authorities should immediately guarantee additional financial resources to the Ombudsman, so the tasks appointed to it may be carried out without further delay.

During the period covered by this report there was positive progress in the field of **anti-discrimination and anti-racism**, mainly because a new law tackling these issues was introduced.⁴ However, the authorities failed to take this window of opportunity and develop a coherent policy on combating racist crimes, the growing fear of Muslims and Arabs, as well as discrimination against migrants and national and ethnic minorities.

Finally, in the field of **migration and integration**, there is a lack of integration-related support and assistance available to migrants. In addition, the Individual Integration Programmes provided to refugees are not sufficient to equip them with the relevant tools and skills needed for proper integration into a new society.

- A special programme on the integration of migrants should be created.

⁴ Ibid. Please note that until December 2010 the Race Directive (2000/43/EC) was not properly transposed into Polish legal system.

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III. Introduction

The report covers the period from March 2010 to March 2011, presenting the State's policy and elaborating on the situation of the main groups vulnerable to racism and discrimination in Poland.

There have been significant developments in the field of anti-discrimination law and policy. In December 2010 the Parliament voted for the act on the transposition of European Union provisions in the field of equal treatment. The act entered into force in January 2011. Although, Poland transposed the Race Directive (2000/43/EC)⁵ into national law, it was done in a very minimalistic way. Furthermore, the Ombudsman, who now acts as the body responsible for the promotion of equal treatment in Poland, faces various difficulties in carrying out its duties. The main concern is the lack of funds provided for the activities required by the Act on the transposition of certain European Union provisions in the field of equal treatment.⁶

There is still a lack of comprehensive state policy tackling anti-racism and anti-discrimination as well as the phenomenon of migration.⁷ Moreover, knowledge of the existing laws and standards of anti-discrimination and anti-racism among the State and local authorities, officials, police officers, employers and other relevant actors remains very low. This situation leads, in some cases to deliberate, but in most instances to unintended, discrimination, however, the authorities do little to counter this situation.

The first part of this report (sections from V to XI) identifies groups vulnerable to racism and discrimination and presents cases, data and statistics. The author elaborates on recent developments in the law in section XII. The next section concentrates on integration and migration. Moreover, the author tries to compare current overview of the situation in Poland with findings presented in the 2009/10 Shadow Report.

⁵ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal of the European Communities*, L 180/22 19.07.2000.

⁶ Above n 3.

⁷ However, note that later in 2011 Polish authorities presented a draft strategy on migration.

IV. Communities vulnerable to racism and discrimination

Communities vulnerable to racism, intolerance and discrimination in Poland are migrants, in particular Chechens, and the Roma. Black people continuously face verbal and physical assaults. Negative stereotypes of Jews, Russians and Germans create xenophobia. Muslims are often considered as a threat to the community, a factor which increases the negative attitude towards this group.

Once a year, a public survey entitled "Poles' attitude to other nations" is published by one of the public opinion research centres. People are asked about the nations they like and dislike the most. The 2011 survey shows that 49% of Poles do not like Roma, 42% Arabs, 31% Chechens, 31% Jews and 33% Turks. On the contrary, 22%, 23%, 28%, 31% and 29% respectively like these nations and 24%, 25%, 29%, 31% and 28% are indifferent. Indeed, the negative attitude towards the Arab and Roma communities has decreased in the past decade, however, it is still very high.⁸ Last year, for the first time, Poles were asked about Chechens, and the number for 'I like' was 28% and for "I do not like" was 29%, almost the same,⁹ however, in 2011 while the percentage of those manifesting a positive attitude remained the same, negative opinion increased by 2%.

Unfortunately, there is a lack of up-to-date information on discrimination and racism in Poland. In particular, the situation of the Muslim community has not been researched in detail. The analyses of the Roma community concentrate on local situations, thus, there is a lack of assessment based on a broader perspective. Due to European Union funds, NGOs have the opportunity to conduct research on the discrimination faced by migrants and refugees. As a result, in 2009, 2010, and 2011 new reports on barriers and opportunities in the integration of these groups were published, providing more concrete data and information.

Foundation Africa another Way (Fundacja Afryka Inaczej) conducted a public survey on the Poles' attitude towards people from Africa. The research shows that only 15% of Poles have had contact with Africans and 7% had physical contact of any sort with them, as Poles mainly encounter foreigners from Western or Eastern Europe. However, "despite low [levels of] contact, experiences proved diverse: positive and negative. What is significant is the fact that whereas the positive experiences did not influence attitudes towards Africans (i.e. they were mostly neutral), the negatives ones were frequently assimilated and generalised onto the entire African society."¹⁰ In general, Poles'

⁸ Centrum Badania Opinii Społecznej, *Komunikat z badań. Stosunek Polaków do innych narodów, BS/13/2011*, Warsaw, February 2011, available at: http://www.cbos.pl/SPISKOM.POL/2011/K_013_11.PDF, accessed 31 August 2011.

⁹ Centrum Badania Opinii Społecznej, *Komunikat z badań. Stosunek Polaków do innych narodów, BS/12/2010*, Warsaw, January 2010.

¹⁰ Fundacja Afryka Inaczej, *Badanie opinii publicznej na rzecz integracji obywateli państw afrykańskich w Polsce*, Warsaw 2010, p. 41.

attitude towards Africans is neutral (63%) or positive (26% like or like very much) rather than negative (11% dislike or dislike very much). This approach is comparable with the one towards foreigners from Commonwealth of Independent States (CIS) (58% neither like or dislike, 26% like and 16% dislike). Furthermore, 62% of Poles have nothing against having an African friend or a doctor, 60% would accept an African teacher or colleague, however, only 45% would agree with their child marrying an African. Poles are rather positive as regards to Africans arriving in Poland to study and less favourable to other types of migrants (respectively 45% and 28% consider it as good). Finally, as regards to discrimination and racism, "most Poles claimed that such elements have never existed in their places of inhabitancy. Those who notice them claimed that they appear only sporadically."¹¹ 33% said they have seen racist text on walls, 28% have heard about racist or unpleasant comments and 19% heard about assaults of Africans. Around 55% have heard about these types of assaults sporadically and 10% of Poles have never heard of this happening.

Another NGO, the Danube Institute of Dialogue (Dunaj Instytut Dialogu) concentrated on the Turkish community in Poland. According to it, the majority of Poles interviewed stated that they do not see Turks on the streets that often and they are rather friendly towards this group. The main concern relates to the job market, as some Poles were afraid of losing their job to immigrants arriving from Turkey.¹² Also the Turks' attitude towards Poles is positive, although half of the 112 people interviewed¹³ had been victims of verbal or physical aggression (by people on the street or by civil servants or Police officers). Young women are the most vulnerable to verbal comments and insults from among the Turkish community living in Poland.¹⁴ Finally, the research shows that there is a stereotype of a Turkish living in Poland as a person who works at a restaurant serving kebabs.

Migrants and asylum seekers are one of the major groups vulnerable to discrimination and racism in Poland, despite the percentage of migrants in the total population remaining rather low. In particular, undocumented migrants (arriving from Ukraine, Belarus, the Russian Federation and Vietnam)¹⁵ face discriminatory practices in the field of labour and housing. Chechens, being the largest group of refugees and asylum seekers (in 2010 around 4600 people from Chechnya applied for international protection),¹⁶ in Poland are discriminated

¹¹ Ibid., p. 51.

¹² There were 150 Poles interviewed during focus groups session or filled out a questionnaire.

¹³ In total 112 persons were interviewed during focus group session or filled out a questionnaire.

¹⁴ Dunaj Instytut Dialogu, *Poznanie i przełamywanie barier we wzajemnych kontaktach pierwszym krokiem do integracji - badanie poziomu integracji imigrantów tureckich*, Warsaw, 2011, p. 31.

¹⁵ It is hard to assess how many undocumented migrants reside in Poland, however, there are about 250 000 Ukrainians, 150 000 Belarusians, 40 000 Vietnamese and 8 000 Armenians. K. Iglicka and K. Gmaj, *Imigracja nielegalna w Polsce zarys problematyki i szacunki*, [in:] *Ziemia Obiecana czy przystanek w drodze?*, Warsaw, October 2010, p. 143, available at: <http://www.rpo.gov.pl/pliki/12900040770.pdf>, accessed 31 August 2011.

¹⁶ Note that the Office for Foreigners, a body responsible for the refugee status determination procedure in Poland, does not split the citizens of the Russian Federation into nationalities. Consequently, only the total number of the citizens of the Russian Federation is provided in the statistics. In 2010 there were in total

against in the field of employment, and in access to housing and education. Media coverage and NGO reports still highlight the amount of hate speech against this group.

Taking into account the negative attitude of society, and the tendency towards stereotypes, social exclusion and marginalisation, the Roma community¹⁷ is particularly vulnerable to discrimination in Poland. Poverty and the high unemployment rate among Roma living in Poland hinder their proper integration into society and are contributing reasons for exclusion.

In the first half of 2010 the Monitoring Team on Racism and Xenophobia (Zespół Monitorowania Rasizmu i Ksenofobii) reported 24 incidents of anti-Semitism in Poland, which is almost the same as in 2008 and 2009 combined (respectively there were 13 and 16 incidents reported).¹⁸ Furthermore, Islamophobia seems to be an emerging problem. It grows out of a fear of Islamic extremism and terrorism. However, according to the report on the state of security in Poland, there were not any significant terrorism threats in the past year.¹⁹ Nevertheless, society tends not to like Arabs, in most cases the general population are afraid of them. This creates a platform for discrimination and racism.

Finally, Black persons remain vulnerable to racist verbal attacks (they are called monkeys, Black monkeys, asphalts, gorillas or niggers) and are beaten up on streets or in other public places. The situation tests carried out in March 2011 showed that this group is discriminated against in access to goods and services.

Potentially, disability, sexual orientation and age are grounds for multiple discrimination. Homophobia is a major problem in Poland. Disability, gender and age are also among the factors in discriminatory practices in particular in the field of employment.

4795 asylum seekers from the Russian Federation. Statistics available at a webpage of the Office for Foreigners: <http://www.udsc.gov.pl/>, accessed 28 August 2011.

¹⁷ According to the available statistics there are 13,000 Roma living in Poland. For more see the webpage of the MoIA: http://www.mswia.gov.pl/portals/pl/61/37/Charakterystyka_mniejszosci_narodowych_i_etnicznych_w_Polsce.html, accessed 28 August 2011.

¹⁸ Monitoring Team on Racism and Xenophobia is a special unit within the Ministry of Interior and Administration collecting data on racist incidents which are brought to its attention. Data presented in FRA, *Anti-Semitism. Summary overview of the situation in the European Union 2001-2010. Working paper*, April 2011, available at: <http://fra.europa.eu/fraWebsite/attachments/Antisemitism-update-2011.pdf>, accessed 31 August 2011.

¹⁹ MoIA, *Raport o stanie bezpieczeństwa w Polsce w 2010 roku*, Warsaw 2011.

V. Racism and related discrimination in employment

VII.i Manifestations of racism and related discrimination in employment

Similar to previous years, economic migrants, refugees and the Roma are the most vulnerable groups to discrimination and racism in the labour market and in their workplace. The lack of knowledge on the law amongst foreigners and employers constitutes a major challenge and creates room for discrimination and racism. The main practices and problems that were reported in previous years remained unchanged in the period covered by this report.²⁰ Finally, the negative attitude of potential employers towards Roma and Chechens is a reason for unemployment and related social problems facing by these groups.

In 2010, the National Labour Inspectorate (Państwowa Inspekcja Pracy - PIP) provided legal advice to workers in Poland 1,2 million times, however, only 1% of this advice was related to alleged discrimination and harassment in the workplace. As in previous years, the cases concerned employers paying unequal remuneration for work by foreigners compared to work by Polish co-workers. According to the available information, foreign workers were often paid less than the proposed salary that was provided in their work permits.²¹ According to PIP, the number of such cases increased radically in 2010. Furthermore, in 2010 in 25% of all inspected companies, firms and other places where foreigners were employed, employers violated other rights such as the right to rest periods or right to be paid for overtime.²² Africans complain that they are paid less for the same work when compared to Polish workers. For instance, a man from Togo said his salary was 7 złoty per hour while his fellow Poles got 10 złoty.²³ Similar cases were reported by NGOs during the year. Furthermore, 70% of undocumented migrants in Poland²⁴ interviewed by the Association of Legal Intervention (Stowarzyszenie Interwencji Prawnej - ALI) stated that they were working more than 6 days per week, 2/3 of them even more than 10 hours per day. Taking into account the fact that the majority of undocumented workers from Ukraine are employed by construction companies, working for longer than 10

²⁰ Consult the 2009/10 ENAR Shadow Report for Poland. M. Fagasiński, *ENAR Shadow Report 2009/2010, Racism and Discriminatory Practices in Poland*, Warsaw/Brussels 2010.

²¹ In an application for a work permit the following information has to be provided: proposed salary, place of work and hours of work.

²² PIP, *Sprawozdanie Głównego Inspektora Pracy w działalności Państwowej Inspekcji Pracy w 2010*, Warsaw 2011, p. 125, available at: http://www.pip.gov.pl/html/pl/sprawozd/10/spraw_10.htm, accessed 31 August 2011.

²³ A. Mikulska, *Rasizm w Polsce. Raport z badań wśród osób, które doświadczyły przemocy ze względu na swoje pochodzenie etniczne, rasowe lub narodowe*, Warsaw 2010, available at: http://www.hfhrpol.waw.pl/pliki/HFPC_Rasizm_w_Polsce.pdf, accessed 31 August 2011.

²⁴ According to the report in 2010 1011 foreigners worked in Poland illegally, 71% of them were from Former Soviet Republics, however, the other major groups were Filipinas, Vietnamese and Chinese. PIP, *Sprawozdanie...*, op. cit., pp. 121-122.

hours per day could cause severe health problems.²⁵ FRA's report on domestic workers shows similar tendencies to those mentioned above. For instance, "in the case of live-in workers, accommodation and lodging costs are sometimes deducted from the salary [without prior notice]. While this is not unusual, if the domestic worker is not properly informed, or if the deduction is high, this may create frustration."²⁶ As a result, a worker receives less than it was agreed or sometimes is not paid at all. Finally, the report highlights cases of verbal assaults and incidents of physical violence against employees.²⁷

As in previous years, Chechen refugees face difficulties in the labour market and are discriminated against by potential employers. This situation is triggered by negative stereotypes, little or no knowledge of rights, and rather slow integration into society.²⁸ In Białystok, one of the major cities with a high Chechen population in Poland, limited knowledge of Polish language together with negative attitude towards this group constitutes a major challenge in finding a source of income.²⁹ On the contrary, a research study among the Turkish community in Poland shows that, in general, this group does not have problems in finding a job.³⁰ However, some foreigners from the Middle East and North Africa highlight that, despite their educational background and work experience, they usually have to work at fast-food restaurants serving kebabs. Finding another job is unlikely.

Examples of NGO Good Practice

Fundacja Edukacji i Twórczości (the **Foundation for Education and Creativity**) in cooperation with Social Assistance Centre in Białystok implemented a project aiming to assist refugees in the labour market. For that purpose, two assistants were employed (one of them Chechen) to help refugees in finding jobs or renting a flat. Moreover, Chechen refugees were provided with various trainings in vocational and skill-building. Also, a nursery was created to take care of children, thus enabling women to participate in organised courses. More information is available at:

²⁵ K. Wencel and W. Klaus, *Dyskryminacja cudzoziemców w Polsce w latach 2008-2010*, Warsaw, 2010, available at: <http://www.interwencjaprawna.pl/docs/ARE-610-dyskryminacja-praktyka.pdf>, accessed 31 August 2011.

²⁶ FRA, *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States, 2011*, pp. 23-24 available at: http://fra.europa.eu/fraWebsite/attachments/FRA-report-domestic-workers-2011_EN.pdf, accessed 31 August 2011.

²⁷ *Ibid.*, p. 41.

²⁸ M. Pajura, M. Łużyński, *Przeciwdziałania dyskryminacji i ksenofobii wobec uchodźców i marginalizowanych migrantów w Polsce*, Cracow 2009, p. 16.

²⁹ The project made by Fundacja Edukacji i Twórczości in Białystok confirmed once more that the negative attitude towards Chechens in Białystok along with little knowledge of Polish language as well as Polish reality, is the main ground of discrimination and exclusion. For example, there were 823 registered unemployed foreigners in Masovian Voivodeship (Województwo Mazowieckie) in December 2010 (54% of them were women), while in 2010 - 1.274. During 2010, only 247 managed to find a job, Wojewódzki Urząd Pracy, *Rynek Pracy Województwa Mazowieckiego w 2010 roku*, April 2011, available at: http://wup.mazowsze.pl/new/images/warszawa/STAT/roczna2010tekst_1.pdf, accessed 31 August 2011.

³⁰ Danube Institute of Dialogue, *Poznanie i przełamywanie barier...*, op. cit., p. 25.

http://www.mentoring.pl/index.php?option=com_content&task=view&id=208&Itemid=147

Unemployment among the Roma community also constitutes a major problem. For example, 100% of Roma living in Kujawsko-Pomorskie Voivodeship are currently without a job. In general, this situation has not changed or improved.³¹

VII.ii The political and legal context

Article 3 of the act on the transposition of certain European Union provisions in the field of equal treatment provides definitions of direct and indirect discrimination as well as definitions of equal treatment, unequal treatment, harassment and sexual harassment. Furthermore, according to article 4, the act covers cases of discrimination in the field of employment, self employment, access to trade unions or employment related education. Civil society criticises the scope of the act concerning vocational training, the conditions related to self employment, participation in the labour unions, and in art. 4(1) access to: instruments of the labour market according to the Act on Promotion of Employment.³² However, it should be noted that discrimination in the field of employment is covered by the Labour Code,³³ where discrimination on the grounds of race, nationality, gender, ethnicity, religion, beliefs and worship, sexual orientation, political opinions or handicap is prohibited. This list, contrary to that provided in new legislation, is not limited, as art. 11 of the Labour Code uses the expression "in particular". This means that the catalogue is open and additional grounds may be added. Moreover, the Labour Code covers only the relations between employers and employees and provisions on vocational training, the conditions related to self employment, participation in the labour unions and access to instruments of the labour market are listed in the act on the transposition of certain European Union provisions in the field of equal treatment, where the list of grounds for discrimination is closed, enumerating only gender, race, ethnicity, nationality, religion, worship and beliefs, handicap, age and sexual orientation.

³¹ MolA, *Sprawozdanie z realizacji Programu na rzecz społeczności romskiej w Polsce za rok 2010*, May 2011, available at: http://www.mswia.gov.pl/portal/pl/566/9139/Sprawozdanie_z_realizacji_Programu_na_rzecz_spoeczności_romskiej_w_Polsce_za_ro.html, accessed 31 August 2011.

³² Ustawa o promocji zatrudnienia i instytucjach rynku pracy, Journal of Laws of 2008, no 69, item 415 with latest amendments.

³³ In articles 11(3) and 18(3a) of the Labour Code. *Kodeks Pracy*, Journal of Laws of 1998, no 21, item 94 with latest amendments.

VI. Racism and related discrimination in housing

VI.i Manifestations of racism and related discrimination in housing

Access to housing constitutes a major problem in Poland. There is a shortage of cheap dwellings available on the market, rents are often too high, and council housing does not meet the existing needs. This makes the situation difficult, not only for citizens, but in particular for migrants, refugees, and Roma.

Homelessness of refugees in Poland is caused by a lack of council housing and a negative attitude from Poles towards this group (mostly towards those of Chechen origin). This was highlighted by a report on homelessness among beneficiaries of international protection in Poland prepared by Institute of Public Affairs (Instytut Spraw Publicznych - IPA).³⁴ According to the report, 20 to 30% of all refugees residing in Poland are homeless and 10% are roofless.³⁵ Often, this situation forces them to return to their country of origin, relocate to Western EU states, or live with friends or family in rather harsh and difficult conditions. The report identifies that single mothers or large families are particularly endangered by homelessness in Poland, especially taking into account the fact that Individual Integration Programmes do not provide refugees with sufficient knowledge and tools for finding a flat or a job, and leaves them dependent on the social system and state support. The lack of employment opportunities, and the negative attitudes of Polish employers and potential landlords towards refugees, make the situation even more difficult. Refugees are often trapped in a vicious circle. The report concludes that the homelessness among refugees in Poland has a long-term nature and is caused by the following factors: insufficiency of individual integration programmes in regard to the refugees' needs, unemployment and lack of financial resources, and negative attitudes of landlords and potential employers towards this group.

Indeed, the negative attitude of landlords towards, in particular, Chechens is common. As mentioned in the previous report, Poles hang up or make the rent very high when they hear on the phone that their future tenant is from the Caucasus.³⁶ Moreover, landlords often do not want to sign a contract with their tenants or do not agree to register them (*zameldować* in Polish) in flats. In general, the homeless refugees that were interviewed stated that they felt

³⁴ K. Wysińska and N. Ryabińska, *Bezdomność uchodźców w Polsce – wyniki badania pilotażowego*, Warsaw 2010.

³⁵ The ETHOS typology was used in the report. "ETHOS classifies homeless people according to their living situation", and rooflessness means without a shelter of any kind, sleeping rough and homelessness means with a place to sleep but temporary in institutions or shelter. More information is available at: <http://www.feantsa.org/code/en/pg.asp?page=484>, accessed 9 October 2011.

³⁶ Above n 34.

stigmatised by Poles, civil servants and social workers as well as that they faced discrimination and negative attitudes.³⁷

Although malpractice of excluding refugees from council housing in Warsaw³⁸ has improved recently, the problem still exists and is also contributing to homelessness. In Lublin, another city with a large population of refugees, draft legislation granting refugees preferential treatment in accessing council housing has been waiting to be voted on in the City Council for a year now. Furthermore, in Białystok refugees have to reside there for 5 years before getting an opportunity to request be added to the list of people waiting for a council house.³⁹ In fact, not only Chechens face obstacles in renting flats. For example, a woman from Mongolia faced similar difficulties. Potential landlords often were not keen to talk with her when she requested to see an apartment, while her Polish husband did not have any difficulties and no excuses were made to him.⁴⁰

VI.ii The political and legal context

According to art. 4(4) point e of the Act on the transposition of certain European Union provisions in the field of equal treatment access to housing is covered by the provisions of the act, however, only if it is available to the public.

According to the information presented by the Ministry of Interior and Administration, the improvement of housing conditions is one of the main priorities for the Programme for the Roma Community in Poland. However, in 2010, only 535 Roma houses were refurbished, which is less than in 2009. In 2010, the funds provided by the Ministry were spent on providing electricity and improving sanitary conditions (by building sewers) in some houses owned by Roma.⁴¹

Finally, compared to the period covered by the previous report, the second half of 2010 and the beginning of 2011 did not have as many intensive campaigns and protests against reception centres for foreigners in Poland. The facilities in Łomża and Białystok were eventually closed, however, and the new ones were opened in Warsaw and Grotniki (a village near Łódź).

³⁷ Above n 34.

³⁸ In the previous report it was mentioned that "in some districts in Warsaw, refugees are not added to the lists of persons waiting for council housing, because they are not considered 'as a permanent inhabitant of a given district'. This policy is discriminatory and violates the law" on protection of occupants' rights and council housing assets which lays down who and on which grounds is eligible for the council housing. Journal of Laws of 2001, no 71, item 733 with latest amendments.

³⁹ K. Wysieńska and N. Ryabińska, *Bezdomność...*, op. cit.

⁴⁰ According to her, landlords often say 'with this wife I will not let you even come in'. A. Mikulska, *Rasizm w Polsce...*, op.cit.

⁴¹ MoIA, *Sprawozdanie z realizacji...*, op.cit.

VII. Racism and related discrimination in education

VII.i Manifestations of racism and related discrimination in education

In general, the situation has not changed when compared to the previous report: as was highlighted before, the education system in Poland does not take the needs of pupils with different backgrounds, culture, and language into account. For example, asylum seeking children and refugee children are not able to follow classes, read books, or access other materials, because they do not have a sufficient command of the Polish language. This creates a discrepancy between Polish and non-Polish pupils who are in the same class, and, in fact, hinders the learning process of foreign children. Ethnic and national minority organisations highlight that there is a lack of intercultural education in Polish schools. They argue that introducing such programs and ideas is not difficult, however, the major challenge is for teachers to implement them. However, this is hardly possible taking into account the fact that the state authorities do not provide them with sufficient training, support, or knowledge. Polish schools do not build mutual understanding and positive approaches towards ethnic groups. 'The Polish model of education is polonocentric' according to one national minority NGO.⁴²

Examples of NGO Good Practice

The **Polish Migration Forum** (Polskie Forum Migracyjne) in cooperation with Warsaw municipal authorities published guidelines on teaching culturally-mixed groups. The guidelines include a chapter on good practices based on information collated from schools from all over the world.

More information is available at:

<http://www.forummigracyjne.org/pl/aktualnosci.php?news=258&wid=26>

There are mixed opinions on the quality of steps undertaken by schools in regards to racist incidents involving pupils. A nine year old girl who was beaten up by fellow pupils did not receive any assistance from a school psychologist. Moreover, her teacher stated that presumably she must have provoked the whole situation. On the other hand, a Chechen woman stated that, in general the school's reaction related to a verbal assault against her children was accurate.⁴³

One of the major challenges in regard to racism and related discrimination in education concerns Roma children. A survey prepared by the Ministry of Interior

⁴² MoIA, *Protokół XXVI posiedzenia Komisji Wspólnej Rządu i Mniejszości Narodowych i Etnicznych*, Warsaw February 2011, available at: http://www.mswia.gov.pl/portal/pl/313/4228/Komisja_Wspolna_Rzadu_i_Mniejszosci_Narodowych_i_Etnicznych.html [retrieved 31.08.2011].

⁴³ A. Mikulska, *Rasizm w Polsce...*, op.cit.

and Administration shows that about 17% of all Roma pupils attend special classes and schools. The reasons provided are as follows: because of light mental retardation (70%), moderate mental retardation (25%) and severe mental retardation (1,2%).⁴⁴ The issue of sending Roma pupils to special schools, simply because they do not have a sufficient grasp of the Polish language was highlighted in the previous report.⁴⁵ Further research has to be carried out to assess the reasons for placing Roma children in special classes and schools, especially taking into account the fact that during the 2009/10 school year only 1% of all pupils in Poland attended special schools of any level (there were in total 5 621 167 pupils, 56 773 attended special schools and this number does not include those attending special classes).⁴⁶

Examples of NGO Good Practice

'Terne Romani Bacht' is a Polish-Roma childrens' dancing and singing group which was created in March 2010. Since then it has been managed by the Foundation on Social Integration Prom and currently performs in Wrocław. The children in the group were recruited from local schools and taught to sing and dance by a Roma instructor.⁴⁷

VII.ii The political and legal context

The act on the transposition of certain European Union provisions in the field of equal treatment in art. 4 covers cases of direct and indirect discrimination in the field of education and higher education, however, according to art. 7 only on the ground of race and ethnicity or nationality. Moreover, the words used in the act have slightly different meanings in Polish comparing to what the Race Directive says. For example, instead of the word 'edukacja' (education) the 'oświata i szkolnictwo wyższe' (education and higher education, literal translation into English) is used. In fact, the Polish meaning is different and narrows the term education.

In regard to some of the difficulties faced by foreign pupils in gaining admission to Polish schools, the Minister of Education issued a statement where he confirmed that a pupil has to be admitted to school if in possession of a certificate issued in his/her country of origin. Nostrifications, translations or any other

⁴⁴ MoIA, *Informacja dotycząca uczniów pochodzenia romskiego z orzeczeniami o potrzebie kształcenia specjalnego*, Maj 2011, available at: http://www.mswia.gov.pl/portals/pl/628/9180/Informacja_dotyczaca_uczniow_pochodzenia_romskiego_z_orzeczeniami_o_potrzebie_ks.html, accessed 31 August 2011.

⁴⁵ Segregacja klasowa, *Gazeta.pl*, 31.07.2008, <http://wiadomosci.gazeta.pl/Wiadomosci/1,80325,5500395.html>, accessed 30 August 2011.

⁴⁶ MoE, *Oświata i wychowanie w roku szkolnym 2009/10*, Warsaw 2010, available at: <http://www.men.gov.pl/images/pdf/DS/2009-2010.pdf>, accessed 31 August 2011.

⁴⁷ M. Drózd-Balkowska, Conduction of Government Programme for Roma community in Poland by the Foundation of Social Integration Prom, [in:] J. Balvin, Ł. Kwadras (eds.), *Situation of Roma Minority in Czech, Hungary, Poland and Slovakia*, Wrocław 2010, pp. 500-501.

requirements imposed by a school's headmaster upon admission are not required by law. Consequently, a foreign pupil has to be admitted to any school on the same grounds as Polish children are.⁴⁸

⁴⁸ Information available at: http://www.men.gov.pl/index.php?option=com_content&view=article&id=1635%3Astanowisko-ministerstwa-edukacji-narodowej-dot-podstaw-prawnych-przymowania-do-polskich-szko-publicznych-obywateli-polskich-powracajacych-z-zagranicy-i-cudzoziemcow-&catid=87%3Aministerstwo-opinie-i- stanowiska-men&Itemid=128, accessed 31 August 2011.

VIII. Racism and related discrimination in health

VIII.i Manifestations of racism and related discrimination in health

In general in Poland there are difficulties in consulting specialists and the waiting time for surgeries, medical tests, and other treatment is rather long. The health care system is weak and requires investments and improvements. With regard to refugees and asylum seekers there is still a lack of psychological assistance provided. According to some NGOs 70% of those applying for international protection are traumatised, and thus require psychological help. For example, only 2% of asylum seekers pending the refugee status determination (RSD) procedure have a one-time session lasting 15 minutes with a psychologist. This situation has further negative consequences for these people, i.e. they feel insecure, desperate and helpless.⁴⁹

Although, asylum seekers have full access to medical treatment during the Refugee Status Determination (RSD) procedure, they face many difficulties in exercising this right. The monitoring of medical assistance provided to asylum seekers shows that the cultural specificities and the special needs of this group are often ignored. Moreover, there are problems in accessing adequate assistance for disabled persons.⁵⁰ Finally, there is a great need to support physicians and foreign patients with an interpreter who can translate and facilitate the process of communication between patient and his/her doctor.⁵¹ 38% of asylum seekers assessed their health condition as bad or very bad. In comparison, 16% of Poles thought the same. Furthermore, about 50% of asylum seeking respondents considered their mental health as bad or very bad, only 1 out of 5 had the opposite opinion.⁵² Furthermore, 19% of interviewed asylum seekers stated that they faced difficulties in accessing health care because of discrimination and prejudices.⁵³

⁴⁹ Konferencja MOPR, czyli o uchodźcach w Lublinie, *Refugee.pl*, no. 16, 2010, available at: http://refugee.pl/cms/site.files/File/numery%20archiwalne%20refugee/16_pol.pdf?PHPSESSID=6328669615ff129cf8260e19de1fe5c8, accessed 31 August 2011.

⁵⁰ M. Książak (eds.), *Monitoring opieki medycznej i psychologicznej nad matkami i dziećmi w ośrodkach dla osób ubiegających się o status uchodźcy, ze szczególnym uwzględnieniem potrzeb osób będących ofiarami tortur, oraz fizycznych i psychicznych urazów wojennych*, Warsaw 2009, pp. 110-113.

⁵¹ A. Chrzanowska and W. Klaus (eds.), *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, Warsaw 2011, available at: <http://www.interwencjaprawna.pl/docs/poza-systemem.pdf>, accessed 31 August 2011. In fact undocumented migrants are the most handicapped group among foreigners residing in Poland as regards to access to health care. In practice, they have access to health care system only in an emergency and only provided emergency medical service (thus outside a hospital).

⁵² Ibid.

⁵³ Ibid. As regards to undocumented migrants, 20% of them stated that they do not go to a physician because they are afraid that a doctor will inform Border Guard, and consequently they will be arrested and deported.

There were some racist and xenophobic incidents reported during the year. Refugees, for example, were not given treatment by a doctor even if the appointment was scheduled. According to NGOs, there are situations where a physician refuses to treat foreigners or foreigners who have coloured skin or wear a veil.⁵⁴

VIII.ii The political and legal context

The act on the transposition of certain European Union provisions in the field of equal treatment in art. 4 covers cases of direct and indirect discrimination in the field of health, however, according to art. 7 only on the ground of race and ethnicity or nationality. Article 7 provides a closed list of these grounds, thus, theoretically, a victim of discrimination could not invoke sexual orientation or religion as a ground of unequal treatment.

According to a report presented by the Ministry of Interior and Administration there was some progress in the field of health care provided to the Roma community in 2010. "Health problems are related to difficult living conditions of the Roma. Activities aimed at the widely understood health prophylaxis were mainly conducted through the employment of community nurses and through the funding of their work. They provide direct medical help, carry out ordinary medical guidance services and also deal with the distribution of medicines and personal hygiene products purchased from subsidies."⁵⁵ The so-called 'white days' were organised throughout the year, they aimed at providing special medical advice for Roma. According to the Ministry, health related issues are among the top priorities for the Programme for the Roma Community in Poland.

⁵⁴ 'Never Again' Association, *Brown Book 2010*, available at: http://ksiega.nigdywiecej.org/BROWN_BOOK_2010.pdf, accessed 31 August 2011.

⁵⁵ MoIA, *Program na rzecz społeczności romskiej w Polsce*, October 2010, p. 14.

IX. Racism and related discrimination in criminal justice

IX.i Manifestations of racism and related discrimination in criminal justice

IX.i.i Policing and ethnic profiling⁵⁶

There was no public debate on the acceptability of the use of specific methods for ethnic profiling in 2010 and the first trimester of 2011. The lack of available data and analyses on the ethnic profiling methods and general policy in this regard, makes it hard to make an assessment of the current situation. For example, a report on police stops and minorities based on surveys conducted in 2008 and published by FRA in 2010, demonstrates that 10% of Roma were stopped by the police in the past 12 months through the use of ethnic profiling, 10% without ethnic profiling and 80% were not stopped at all.⁵⁷

Although, research on this issue has not been carried out in recent years, law enforcement bodies in Poland could follow orders to profile some groups more than others when counter terrorism measures and public security are concerned. The report on the state of security in Poland, prepared by the Ministry of Interior and Administration, lists the groups of foreigners who arrive from so-called countries of 'high level risk'. Special attention, according to it, has to be paid to Chechen asylum seekers staying in reception centres. These facilities are open, thus there are some difficulties in monitoring and controlling whom asylum seekers contact, talk and maintain relations. The report explicitly states that this creates an opportunity for organised groups, radicals and terrorist groups operating in the Caucasus to expand their networks and increase their presence in Poland.⁵⁸ The factual threat of those groups to public safety in Poland is unknown. However, according to data provided by the Internal Security Agency (Agencja Bezpieczeństwa Wewnętrznego - ABW) in 2010 there were 5 cases of alleged terrorism in Poland, but no one was charged with terrorism activity. The same report states that in general Poland is not a potential target for terrorists.⁵⁹

IX.i.ii Racist violence and crime

There was some racist violence and racism related crimes in the period covered by this report. Jews, Roma, Chechens and Black people were the predominant victims.

⁵⁶ The Open Society Institute defines "ethnic profiling" as the "use of generalisations grounded in ethnicity, race, national origin, or religion - rather than objective evidence or individual behaviour - as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity".

⁵⁷ FRA, *Data in Focus Report. Police Stops and Minorities, 2010*, available at: <http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS-police.pdf>, accessed 31 August 2011.

⁵⁸ MoIA, *Raport o stanie bezpieczeństwa...*, op.cit.

⁵⁹ Ibid.

In December 2010, bricks with black swastikas painted on them were thrown into a flat owned by an activist who promotes Jewish history and culture in Lublin. One brick had a firecracker attached to it and it exploded, ruining a room. He was convinced that this attack was connected to his engagement in Polish-Jewish relations, however, the prosecutor's office in Lublin decided to characterise this act as an offence against health and a direct threat to life. On the contrary, HFHR argued that it was an unlawful threat to a particular individual because of his national, ethnic, political or religious affiliation (art. 119(1) of the Penal Code). The first prosecutor's office did not want to agree with that interpretation, stating that the victim was not a Jew and was only connected with the Jewish community, however, the charges were changed eventually and now the investigation is being carried out on the grounds laid down in art. 119(1) of the Penal Code.⁶⁰

Examples of NGO Good Practice

In June 2010, the **Nomada Association** started to provide free legal assistance to victims of hate speech and racism in Wrocław, within a bigger project aiming to research racism and hate speech in Poland.

More information is available at:

http://sukurs.nomada.info.pl/index.php?option=com_content&view=article&id=18&Itemid=20&lang=pl

During the year there were several reports of destruction and vandalism of Jewish cemeteries, synagogues and commemoration monuments. Often, signs such as 'Juden raus' or 'Jews to the gas' were written on walls.⁶¹ In July 2010 the grave of Irena Sendlerowa was desecrated. "On the gravestone they [unknown perpetrators] wrote «Jude went» («Jews out!»). The anti-Semitic inscription was removed from the gravestone on the same day".⁶²

The second half of 2010, and the beginning of 2011, brought an escalation of conflict between a Roma family and the local Polish community living in Limanowa (a town in Małopolskie Voivodship, in the south of Poland). In July 2010, a fight between Roma and Poles started: it was triggered by the information that a pregnant Polish woman had been attacked by a dog owned by Roma. More than 100 people tried to break into a Roma family's flat, however,

⁶⁰ Information available at HFHR's web page: <http://www.hfhrpol.waw.pl/dyskryminacja/litygacja/dyskryminacja-pochodzenie-narodowe-i-etniczne/>, accessed 31 August 2011.

⁶¹ Information available at: <http://www.jewish.org.pl/index.php/pl/sposecznopydowska-w-polsce-mainmenu-59/antysemityzm-mainmenu-72.html>, accessed 31 August 2011.

⁶² 'Never Again' Association, *Brown Book 2010*, op.cit. "During the World War II Irena Sendlerowa rescued about 2,5 thousand children from the ghetto in Warsaw. In 1965 she was honoured by the Israeli institute Yad Vashem with the Righteous Among the Nations medal."

they were eventually stopped by the police (the local police had to ask for reinforcements from Cracow to prevent further fights and clashes). The police admitted that tensions between the two communities had been in the air for a long time. In 2009, about 20 police interventions took place.⁶³ However, "[d]ue to the lack of offense, the prosecution refused to initiate proceedings for incitement to hatred on grounds of nationality (...). Other proceedings were also discontinued on the threats directed at the Roma family".⁶⁴

There were several racist incidents in football stadiums. The most common concerned anti-Semitic slogans and posters⁶⁵ displaying racist symbols, as well as insulting Black players by using terms such as 'nigger',⁶⁶ Racism in football constitutes a challenge, in particular in relation to EURO 2012, which Poland is co-hosting.

Examples of NGO Good Practice

In September 2010, the first football match within an Ethno League (Etnoliga) kicked off in Warsaw. **Foundation for Freedom** (Fundacja dla Wolności) together with **Never Again Association** (Stowarzyszenie Nigdy Więcej) managed a multicultural amateur football league, a project aiming at integrating and promoting positive attitudes towards other cultures. 11 female and male teams composed of players from Poland, France, Ireland, Italy, Ghana, Guinea, Cameroon, Congo, Nigeria, Sierra Leona, Somalia, Sudan, Togo, Afghanistan, Chechnya, Ingushetia, Iran, Vietnam, Canada and Mexico took part of the first edition of Etnoliga.

More information is available at: <http://www.etnoliga.org/>

Finally, Chechens continued to be a target of racist attacks and abuses in Łomża and Białystok. Eventually, both reception centres where they had been accommodated were closed.

⁶³ See: RPO z urzędu podjął sprawę Romów w Limanowej, *Onet.pl*, <http://wiadomosci.onet.pl/kraj/rpo-z-urzedu-podjal-sprawe-romow-w-limanowej,1,3538669,wiadomosc.html>, accessed 31 August 2011 and Konflikt w Limanowej trwa od lat, *Rmf24.pl*, <http://www.rmf24.pl/fakty/polska/news-konflikt-w-limanowej-trwa-od-lat,nld,289730>, accessed 31 August 2011.

⁶⁴ 'Never Again' Association, *Brown Book 2010*, op.cit.

⁶⁵ "On May 8th, during a third-division derby between Stal Rzeszów and Resovia Rzeszów, there was yet another anti-Semitic incident involving "fans" of Resovia. They exhibited a banner showing a silhouette of a man with a characteristic yarmulke in the colours of Israel: white and blue. These colours are also the club colours of Stal. The yarmulke itself was stylised as the striped uniform of concentration camp inmates during the Holocaust. Another banner was displayed above the caricature saying: "Death to hook noses". Stal "fans" meanwhile displayed a banner with a drawing of a rat wearing a Resovia club shirt with a Star of David instead of an emblem." 'Never Again' Association, *Brown Book 2010*, op.cit.

⁶⁶ East Europea Monitoring Centre, *Hateful. Monitoring racism, discrimination and hate crime in Polish and Ukrainian football 2009-2011*, Warsaw, Kyiev, London 2011.

IX.i.iii Counter terrorism

Polish law defines terrorism as a “prohibited act subject to the penalty of deprivation of liberty with the upper limit of five years, committed in order to: 1) seriously intimidate many persons; 2) compel the public authority of the Republic of Poland or of the other State or an international organisation agency to undertake or abandon specific actions; 3) cause serious disturbance to the constitutional system or the economy of the Republic of Poland, the other State or an international organisation – and a threat to commit such an act.”⁶⁷ The report on the state of security in Poland highlights that Poland is not a target for terrorist attacks.

The case of a Sikh, concerned a citizen of the United Kingdom travelling frequently within the EU, who was asked on several occasions to take off his turban at the security check at the airport in Warsaw.⁶⁸ In September 2010 he sued Border Guards for violating his right of publicity arguing that requesting him to take off the turban violated his freedom of religion, freedom to move freely and with dignity. The case is still pending before the Regional Court in Warsaw.⁶⁹

IX.ii The political and legal context

The Penal Code⁷⁰ defines a racist crime as a crime against the public order. Under Article 256 the public promotion of fascist or another totalitarian system, and hate speech based on nationality, ethnicity, racial or religious differences are prohibited and could be subject to a fine or imprisonment of up to 2 years. Moreover, publicly insulting a group or a person because of his/her nationality, ethnicity, or religion or a lack thereof, could be punished by the deprivation of liberty for up to 3 years (Article 257). In regard to racist crime, Article 119(1) outlines that a person who indicates or uses violence or makes unlawful threats towards a group of person or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, commits a crime and could be deprived of their liberty from 3 months up to 5 years.

Following a police shooting on a market square in Warsaw, which caused death of a Nigerian man, later in 2010 a discussion on the attitude of the law enforcement officers towards migrants emerged.⁷¹ A few days later protests

⁶⁷ Art. 115a par 2 of the Penal Code.

⁶⁸ For more see: M. Fagasiński, *ENAR Shadow Report 2009/2010...*, op.cit.

⁶⁹ Information available at HFHR's web page: <http://www.hfhrpol.waw.pl/dyskryminacja/litygacja/dyskryminacja-wyznanie-i-swiatopoglad/>, accessed 31 August 2011.

⁷⁰ Kodeks Karny, Journal of Laws of 1997, no 88, item 553, with latest amendments.

⁷¹ A man from Nigeria, married to Polish citizen, was shot dead in May 2010 in a fight with a police officer pending a police action aimed at checking legality of stay of migrants trading on a market square in Warsaw. The police argued that it was self defence as the officer was attacked. On the contrary some witnesses underlined that the officers were unprepared for this action and treated Nigerians as potential criminals. See:

against racism and violent police action took place. The prosecutor's office opened two investigations, one concerning 'assault on a police officer' and second on 'a police officer exceeding authority'. The case is still pending at the time of writing this report.

There is a need to educate judges, police officers, and prosecutors on racism and discrimination. For example, the District Court in Wrocław overruled the judgment of the court of lower instance sentencing 4 organisers of a demonstration which took place in Wrocław in 2007 when protesters used swastikas, and shouted out and carried placards with slogans such as "Europe for whites, Africa for HIV", 'All different, all white', 'White Power.'⁷² The court of lower instance had decided that such behaviour violated art. 256 of the Penal Code and the protesters were promoting a totalitarian system, however, the Regional Court had different opinion and argued that they did not.⁷³

The General Prosecutor sent a letter to the respective offices asking them to pay more attention to xenophobic and racist crimes. According to statistics in 80% of all racism cases, prosecutors decided to not to take up a case as they did not see that a crime was committed. If they decided to further investigate, only 16% of these cases were sent to courts: in 2010 there were, in total, 182 cases related to xenophobic and racist crimes investigated by prosecutor's offices, however, only 30 of these cases were brought before the courts.⁷⁴ The main problem concerns victims of hate speech and racist crimes who usually do not report to the police or prosecutor's office. In most cases, they are not able to identify perpetrators, and if they are foreigners it can be a problem that police officers do not speak any other languages than Polish, thus communication is barely possible. The police also tend to trivialise these kinds of cases and do not pay sufficient attention to a person who makes a complaint. Police officers often do not want to take any action or they have inadequate knowledge to realise that a particular crime was motivated by racism.⁷⁵ In Wrocław, for example, police did want to deal with a case of Black person who was spat at in the face by a young man. Police argued that this was not a crime, even though, the victim was Black.⁷⁶

According to HFHR, statistics show that hate crimes are common, however, a very low number of those crimes are actually reported to the police. They can be difficult cases, as there is a thin line between freedom of speech, freedom of

Śmierć Nigeryjczyka podczas akcji warszawskiej policji, *Gazeta.pl*, <http://wyborcza.pl/8,75402,7935297.html>, accessed 12 November 2010.

⁷² 'Never Again' Association, *Brown Book 2010*, op.cit.

⁷³ Sąd Okręgowy we Wrocławiu Wydział IV Karny Odwoławczy, judgment of 15 December 2010, Sygn. akt. IV Ka 978/10.

⁷⁴ Ścigajcie rasistów, *Gazeta.pl*, available at: http://wyborcza.pl/1,76842,9133507,Scigajcie_rasistow.html#ixzz1EaDrGO5, accessed 31 August 2011.

⁷⁵ A. Mikulska, *Rasizm w Polsce...*, op.cit.

⁷⁶ M. Starnawski and K. Pawlik, *Masz problem? Przemoc motywowana nienawiścią we Wrocławiu. Raport na podstawie badań przeprowadzonych na przełomie 2010 i 2011 roku*, Wrocław 2011, available at: http://www.sukurs.nomada.info.pl/images/raport/raport_calosc.pdf, accessed 31 August 2011.

expression and hatred. The main question asked is whether or not a victim of these kinds of crimes is a member of a particular group and how an action or a crime committed is related to that fact. For instance, there is a question as to whether a racist crime could be committed against a person who is a representative of a particular race, national or ethnic group, or just feels connected to one of these groups but at the same time is not a member? This is yet to be answered.⁷⁷

Finally, the Act on the transposition of certain European Union provisions in the field of equal treatment amends to the Law on the Ombudsperson imposing on the Ombudsperson new competences regarding the provision of legal assistance as well as conducting independent research and issuing independent reports and recommendations. However, additional financial sources are not guaranteed for fulfilling these new obligations.

⁷⁷ I. Pacho, Przepęstwa z nienawiści na tle przynależności rasowej - obserwacje Helsińskiej Fundacji Praw Człowieka [in:] P. Szczętko (eds.), *Przepęstwa z nienawiści w Polsce. Publikacja pokonferencyjna*, Toruń 2011.

X. Racism and related discrimination in access to goods and services

X.i Manifestations of racism and related discrimination with access to goods and services in the public and private sector

The main problem, with regard to racism and related discrimination in access to goods and services reported during 2010 and the first quarter of 2011, concerned the Roma and Black people. Attitudes and treatment in shops, pubs and bars were the main concern. For example, a woman from Mongolia complained that she was followed in shops and sometimes considered a shoplifter just because she looked different. Moreover, sellers do not want to touch Black people when giving change and people do not want to sit next to them on buses and prefer wait until a place next to a white person is free.⁷⁸ There were also instances where Black people were discriminated against by bartenders who did not want to serve them a drink or just ignored them.⁷⁹

In December 2010, a Roma man was asked to leave a club in Poznan just after he had been asked about his ethnicity. He was informed that Roma were not allowed there. A week later, accompanied by friends, he tried to enter the club again, however, was stopped at the door and asked to leave. Club's manager stated that there was a 'no Roma policy' so they could not come in. A few months later he sued the club for violating his dignity. The case is still pending before the Regional Court in Poznan at the time of writing this report.⁸⁰ The prosecutor's office in Poznan did not start investigation on the grounds of racism arguing that there were no violence and no one was insulted in public. According to the office, "asking someone to leave or preventing to come in shall be condemned, however, do not meet the grounds for an offence [listed in the Penal Code]."⁸¹

Examples of NGO Good Practice

In March 2011, for the first time, situation tests (*testy dyskryminacyjne* in Polish) took place in Poland as part of a Europe wide initiative of various

⁷⁸ A. Mikulska, *Rasizm w Polsce...*, op.cit.

⁷⁹ M. Starnawski and K. Pawlik, *Masz problem?...*, op.cit.

⁸⁰ Information available at HFHR's web page: <http://www.hfhrpol.waw.pl/dyskryminacja/litygacja/dyskryminacja-pochodzenie-narodowe-i-etniczne/>, accessed 31 August 2011. See also: Niewpuszczony do lokalu w Poznaniu Rom chce przeprosin i zadośćuczynienia, *GazetaPrawna.pl*, http://www.gazetaprawna.pl/wiadomosci/artykuly/492528,niewpuszczony_do_lokalu_w_poznaniu_rom_chce_przeprosin_i_zadoszczynienia.html, accessed 31 August 2011. Menu nie dla Romów do prokuratury, *Gazeta.pl*, available at: http://wyborcza.pl/1,75478,9016189,Menu_nie_dla_Romow_do_prokuratury.html, accessed 31 August 2011.

⁸¹ Dyskryminacja Romów nie dla prokuratury, *Gazeta.pl*, available at: http://wyborcza.pl/1,75478,9149906,Dyskryminacja_Romow_nie_dla_prokuratury.html, accessed 31 August 2011.

NGOs. There were carried out by a group of NGOs in cooperation with Warsaw local authorities. White and black testers looking alike, behaving the same way and wearing similar clothes visited 8 popular night clubs in Warsaw. The results showed that in 3 of them, Black persons were discriminated against,⁸² as the door staff had refused Black testers to enter while 5 minutes later White testers were allowed to enter.⁸³ They Black testers were told either that 'there was a closed party' or 'invitations were required' and were refused entrance. The White testers entered without any problems.⁸⁴

Finally, ALI highlights that foreigners are often discriminated against at the Registry Offices (Urząd Stanu Cywilnego - UDS). For example to get married a birth certificate accompanied with a sworn translation has to be presented, however, some offices request additional documents to be provided. Imposing this kind of requirement is not in line with law.⁸⁵

X.ii The political and legal context

The act on the transposition of certain European Union provisions in the field of equal treatment prohibits unequal treatment (i.e. direct and indirect discrimination) in access to services, including access to housing, and goods on the ground of gender, race and ethnicity or nationality (article 6 in relation to article 3). However, any other ground is excluded from that list. For the first time these provisions were introduced in Polish legislation, thus, at present, assessing their impact is not possible. Nevertheless, the narrow definition and limited list of grounds for unequal treatment could constitute a problem when the law will be used in practice.

After the situation tests were carried out, a discussion on how and if they can be used before the courts arose. According to NGOs the sole idea of a situation test as a tool and as evidence is rather unknown to the states' bodies dealing with discrimination and courts, besides law is also silent on this issue. Furthermore, there is a lack of jurisprudence that could help in defining on this tool and thus assist in using it as evidence.⁸⁶

⁸² See press release on situation test at: <http://www.interwencjaprawna.pl/docs/press-release-noc-testow.pdf>, accessed 31 August 2011.

⁸³ 'Whites only' nightclubs in Warsaw?, *Polskie Radio*, available at: <http://www.thenews.pl/1/10/Artykul/23675,%E2%80%98Whites-only-nightclubs-in-Warsaw>, accessed 31 August 2011.

⁸⁴ Bawili się tylko Biali, *Gazeta.pl*, http://wyborcza.pl/1,75478,9207430,Bawia_sie_tylko_biali.html, accessed 31 August 2011.

⁸⁵ K. Wencel and W. Klaus, *Dyskryminacja...*, op.cit.

⁸⁶ K. Wencel and W. Klaus, *Noc Testów w Polsce. O dyskryminacji w dostępie do usług i praktycznym wykorzystaniu testów dyskryminacyjnych*, Warsaw 2011, available at: <http://www.isp.org.pl/uploads/filemanager/K.WenceliW.KlausNoctestwwPolsce.Odyskryminacjiwdostepiedousugipraktycznymwykorzystaniuustawdyskryminacyjnych.PDF> accessed 31 August 2011.

XI. Racism and related discrimination in the media

XI.i Manifestations of racism and related discrimination in the media, including the internet

Polish Internet is filled with xenophobic, homophobic and racist posts and comments and is a platform of uncontrolled anger, rudeness and unacceptable behaviour hidden behind anonymity and impunity. Racist comments on refugees (mainly in Chechens), Roma, Jews and Muslims are posted often.

'The Minority Report' is a project aiming at monitoring hate speech on Internet forums of 3 popular Polish web-pages (gazeta.pl, onet.pl and wp.pl). A report presented in April 2011 shows that from about 10 million analysed posts and comments 143 223 concerned minorities and 85 596 contained hate speech and negative attitude towards, in particular Jews (21 200), Russians (about 17 800), homosexuals (12 000), Germans (10 000) and Muslims (about 9 000). In general, posts and comments, if they disparaged a particular group, used similar themes, for example cultural, historical and political elements related to Jews, Russians and Germans while religion played a crucial role in hate speech against Muslims and invectives were used towards homosexuals.⁸⁷

Examples of NGO Good Practice

In June 2010, **Fundacja Wiedza Lokalna** started the aforementioned project called '**Minority report**' aiming at monitoring posts, comments and other texts left by Internet users on the most popular Polish web-pages. The special algorithms of the program identify negative and positive texts related to national and ethnic minorities, which then are analysed by experts, classified and stored in an online database. The database is available for free to researchers, NGOs, journalists and civil servants.

More information is available at: <http://www.raportmniejszosci.pl/>

During the course of 2010, Chechens were the target of hate speech and racist comments, posts and texts. In the previous report it was mentioned that the prosecutor's office started an investigation on racist publications on Chechens in Łomża posted on the Internet.⁸⁸ A couple of months later a movie called "The life of a Chechen" (*Żywoł Czeczena* in Polish) was published on the Internet and is still available, for example, on YouTube. The movie contains racist, xenophobic and hate speech elements and presents Chechens as freeloaders, and as aggressive and lazy. In the opinion of HFHR and other NGOs, the movie incites

⁸⁷ Raport Mniejszści, presentation on findings, April 2011, available at: <http://www.raportmniejszosci.pl/#!wydarzenia/vstc2=19-iv-2011>, accessed 31 August 2011.

⁸⁸ M. Fagasiński, *ENAR Shadow Report 2009/2010...*, op.cit.

and uses violence, and makes unlawful threats towards a group of persons or a particular individual because of their/his national, ethnic, political or religious affiliation.⁸⁹

Finally, within the abovementioned project on monitoring of hate speech on the Internet forums research on posts concerning Chechens was conducted. It concludes that refugees from Chechnya were often compared to animals, called terrorists, and described as aggressive Muslims who are a threat. Moreover, the role of women in a Muslim society was also presented and criticised as women were compared to household animals and men's slaves.⁹⁰

For a number of years, the Radio Maryja and Trwam television have broadcasted anti-Semitic, anti-German, and anti-Russian reports and discussions, however, neither the state nor the Catholic Church authorities have been able to deal with this problem. In 2010, the National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji - KRRT) received only 6 complaints in regard to racism, discrimination and xenophobia in broadcasted programmes on the radio and television.⁹¹

Examples of NGO Good Practice

Since January 2010, **Prom Foundation** in cooperation with **Information and Social Development Centre** in Wrocław has been carrying out a project 'Roma and Gadjó as Neighbours' aiming at activating the Roma community, enhancing their career prospects and level of education, and promoting Roma Culture.⁹²

One of the elements of this project was the Roma Culture Film Festival organised in April 2010: movies by Gatlif, Kusturica or Dellal were screened and followed by music evenings and discussions.⁹³

More information is available at: <http://www.um.wroc.pl/m3375/p132187.aspx>

XI.ii The political and legal context

The act on the transposition of certain European Union provisions in the field of equal treatment does not directly cover discrimination in the field of media.

⁸⁹ A. Mikulska, *Rasizm w Polsce...*, op.cit. In this case, the conditions laid down in art. 119(1) of the Penal Code are met.

⁹⁰ Raport Mniejszości, presentation on findings "Nic do nich nie mam ale..." available at: <http://www.raportmniejszosci.pl/#!/wydarzenia/vstc2=i-2011>, accessed 31 August 2011.

⁹¹ KRRT, *Sprawozdanie Krajowej Rady Radiofonii i Telewizji z działalności w 2010 rok, March 2011*, available at: <http://www.krrt.gov.pl/bip/LinkClick.aspx?fileticket=KiOm0rcrJo0%3d&tabid=61>, accessed 31 August 2011.

⁹² M. Dróżdż-Balkowska, *Conduction of Government...*, op.cit, p. 513.

⁹³ D. Kozak-Rybska, Wrocław miastem spotkań Romów i Gadziów, [in:] J. Balvin, Ł. Kwadras (eds.), *Situation of Roma Minority...*, op.cit., pp. 77-78.

There is a lack of research available on racism and discrimination in the media at the time of writing this report and there is no legal provision that could be directly invoked in the case of discrimination in the media. In general, alleged victims of discrimination may go to the civil court claiming that their personality rights were violated under article 24 of the Civil Code.⁹⁴ Moreover, they have the right to claim for damages for loss or harm suffered.

⁹⁴ Kodeks Cywilny, Journal of Laws 1964, No 16, item 93 with latest amendments.

XII. Political and legal developments in anti racism and anti discrimination

The period covered by this report was rich in political developments. During that time Donald Tusk remained the Prime Minister, and the Civic Platform (Platforma Obywatelska) was in coalition with the Polish People's Party (Polskie Stronnictwo Ludowe) which had the majority in the Parliament. In April 2010, the President, Lech Kaczyński, Ombudsman, Janusz Kochanowski, and several prominent civil servants and members of the Parliament died in a plane crash near Smolensk. As the result of presidential elections which took place in June 2010, Bronisław Komorowski (Marshall of the Lower Chamber of the Parliament and member of Civic Platform) became the new President.

In November the municipal elections were held. Hanna Zdanowska, member of the Parliament was elected President of the city Łódź. Accepting this position she had to decline her place in the Lower Chamber of the Parliament, which was filled by John Godson from Nigeria - the first Black member of the Polish Parliament.⁹⁵

Finally, the act on transposition of certain European Union's provision in the field of equal treatment came into force in January 2011. Earlier, in May 2010 the European Commission referred Poland to the European Union Court of Justice (ECJ) for incorrectly implementing the Racial Directive and provisions related to prohibiting discrimination on the grounds of racial and ethnic origin.⁹⁶ The European Commission argued that Poland did not transpose the directive properly (that it was transposed only in the field of employment). At that time, there were "no specific provisions in Polish legislation that would prohibit discrimination on grounds of racial or ethnic origin with regard to social protection and social advantages, access to goods and services, including housing, membership in trade unions, employers' bodies and professional organisations and access to education. Similarly, the Polish provisions on protection against victimisation cover only the field of employment and not the other areas within the scope of the Directive."⁹⁷ Eventually, in March 2011, after the Act on the Implementation of Certain Provisions of the European Union in the Field of Equal

⁹⁵ However, he is not the first immigrant MP. Hubert Costa from Bangladesh was elected to the Parliament in 2005. For more see: <http://polska.newsweek.pl/john-godson---pierwszy-czarny-posel,68842,1,1.html>, accessed 31 August 2011.

⁹⁶ European Commission, *Press Release: Equality: European Commission refers Poland to Court of Justice over race equality rules*, IP/10/531, May 2010, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/531&type=HTML>, accessed 31 August 2011.

⁹⁷ Ł. Bojarski, *News report. European Commission referred Poland to the European Court of Justice for incorrect transposition of the Racial Equality Directive 2000/43/EC*, July 2010, available at: <http://www.non-discrimination.net/content/media/PL-13-EC%20referred%20PL%20to%20ECJ%20for%20non-transposition.pdf>, accessed 31 August 2011.

Treatment was passed the European Commission decided to not proceed with its referral to the ECJ.⁹⁸

The drafting process of the act on the transposition of certain European Union provisions in the field of equal treatment started in 2006 and was politically difficult. "At the beginning the scope of the Act was wide and went beyond the scope of Directives 2000/43 and 2000/78, it was in a sense, anticipating the proposal of the new anti-discrimination horizontal directive discussed within the EC. It prohibited discrimination in access to social security, health care, education, access to publicly accessible goods and services (including housing), on the grounds of race and ethnic origin, nationality, gender, religion or beliefs, political beliefs, disability, age, sexual orientation, property, marital and family status. However subsequent versions of the draft law limited the scope of the Act. Finally the Act passed (...) [in] 2010 is an almost verbatim implementation of the Directives and does not go beyond their scope. It provides protection from discrimination in all fields outside employment only in relation to gender, race, ethnic origin and nationality (with additional limitations). The name of the draft law has been also changed, from 'Act on Equal Treatment' to 'Act on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment'.⁹⁹

First of all, NGOs criticise the act's title. Instead of the 'Act on Equal Treatment' it was renamed the 'the act on the transposition of certain European Union provisions in the field of equal treatment'. It makes it difficult to understand and prioritises the fact of transposition, rather than creation of an act dealing exclusively with equal treatment and protection against discrimination. The act transposes the EU laws, however, it does it in a very minimalistic way. For example, art. 1 lists only gender, race, ethnic origin, nationality, religion, beliefs, opinion, disability, age and sexual orientation as the grounds for unequal treatment. Health condition, civil status or gender identity are not mentioned therein. The expression 'in particular' which is used in the Labour Code¹⁰⁰ as regards to the grounds for discrimination is omitted here. Consequently, the catalogue of the grounds for discrimination is closed. Neither multiple discrimination nor discrimination by association are introduced by this act, and thus in fact do not exist in the Polish legal system. With regard to definitions of equal and unequal treatment: Art. 3 provides some general definitions of direct and indirect discrimination as well as definitions of equal treatment, unequal treatment, harassment and sexual harassment. However, NGOs argue that the wording 'unequal treatment', generally is not used in Polish jurisprudence on

⁹⁸ KE rezygnuje z postępowań przeciw Polsce ws. dyskryminacji, *GazetaPrawna.pl*, http://prawo.gazetaprawna.pl/artykuly/495496.ke_rezygnuje_z_postepowan_przeciw_polsce_ws_dyskryminacji.html, accessed 31 August 2011.

⁹⁹ Ł. Bojarski, *News Report. New law onequal treatment*, November 2010, available at: <http://www.non-discrimination.net/content/media/PL-16-new%20law%20on%20equal%20treatment%20passed%20by%20the%20Sejm.pdf>, accessed 31 August 2011.

¹⁰⁰ Kodeks Pracy, Journal of Laws of 1998, no 21, item 94 with latest amendments.

discrimination, so introducing it may create difficulties in its interpretation in the future. Hence, the term discrimination should be used exclusively. Thirdly, civil society criticises the scope of the act concerning vocational training, the conditions related to self **employment**, participation in the labour unions, and in art. 4(1) access to: instruments of the labour market according to the Act on Promotion of Employment¹⁰¹ (point a), social security (point b), health care (point c), education and higher **education** (point d) and services (point e). However, points b, c and d, have slightly different meanings in the Polish act when compared to what the Race Directive says. For example, instead of the word 'edukacja' (education) the 'oświata i szkolnictwo wyższe' (education and higher education, literal translation into English) is used. The Polish meaning is different and narrows the term education. Fourthly, art. 5 ensures that the act will not cover discrimination in private and family life. The NGOs argue, however, that it should be the contrary, as discrimination often also occurs in the field of private life. Fifthly, the act enumerates the principles for equal treatment and the scope of their legal protection (articles 6-10), however, does not guarantee equal treatment in all fields enumerated. For instance, art. 6 says that unequal treatment on the grounds of gender, race, ethnic origin, or nationality in **access to services and social security** is prohibited. Consequently, any other ground is excluded from that list. Similarly, with access to **education and health care**, only race, ethnic origin and nationality are listed in the act (art. 7). Finally, only in the case of access to vocational training, employment, labour unions and other instruments available on the labour market, the act establishes that discrimination is prohibited on the grounds of gender, race, ethnic origin, nationality, religion, belief, opinion, disability, age, and sexual orientation (art. 8). To sum it up, the act introduces different types of protection depending on the field in which a victim was discriminated against.¹⁰²

Furthermore "the Act envisages the designation of the equality body, namely the existing Ombudsperson office (Commissioner for Civil Rights Protection). The (...) law includes an amendment to the Law on the Ombudsperson imposing on the Ombudsperson new competences regarding the provision of **legal assistance** as well as conducting independent research and issuing independent reports and recommendations".¹⁰³ However, it does not provide any additional resources for fulfilling these new obligations. "The explanatory memorandum part to the draft explains that this is not needed and that the Ombudsperson office can conduct these new competences within the existing structure and budget. According to the Constitution (Article 80) the Ombudsperson deals with relations between state organs and individuals. Therefore it is not fully clear whether at all, and if yes, to what extent it may intervene in disputes between private parties.

¹⁰¹ Ustawa o promocji zatrudnienia i instytucjach rynku pracy, Journal of Laws of 2008, no 69, item 415 with latest amendments.

¹⁰² Koalicja na Rzecz Równych Szans, *Stanowisko Koalicji na Rzecz Równych Szans dotyczące projektu Ustawy o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania (Projekt z dnia 21.05.2010 r.)*, October 2010, available at: http://ptpa.org.pl/images/publikacje/19_06_2010_STANOWISKO_KOALICJI.pdf, accessed 31 August 2011.

¹⁰³ Ł. Bojarski, *News Report. New law onequal treatment...*, op.cit.

The Act passed includes provision that reads as following: «In the implementation of the principle of equal treatment between private parties the Ombudsman may limit its action to pointing out to the applicant possible means of action». The Government Plenipotentiary for Equal treatment (within the Chancellery of the Prime Minister) would also remain as a body coordinating equality policy within the Government."¹⁰⁴

Another problem concerns the competences of the Ombudsman. As an equality body the Ombudsman should provide independent assistance to victims of discrimination, however, according to Article 80 of the Polish Constitution "[i]n accordance with principles specified by statute, everyone shall have the right to apply to the Commissioner for Citizens' Rights for assistance in protection of his freedoms or rights infringed by organs of public authority". Hence, the Ombudsperson deals with cases between state parties (for example state's institutions) and an individual. Private parties, are thus excluded from the list. On the other hand, the Act on the transposition of certain European Union provisions in the field of equal treatment states that the Ombudsman may take action in the cases concerning unequal treatment, even if a private party is concerned. This provision, according to some experts, may violate the relevant provisions of the Constitution (i.e. article 80)¹⁰⁵ as the Ombudsman cannot assist in a case involving a private institution, company or any other private party. Furthermore, according to Article 11 of the Ombudsman Act,¹⁰⁶ the Ombudsman "[h]aving become acquainted with each application received (...) may" take up the case (art. 11(1)) or not, if it is decided so, and even if the case concerns a public institution and a private party (art. 11(4)). Consequently, the Ombudsman is not obliged to provide assistance to a person who claims s/he was discriminated against and has full discretion in deciding in which cases to assist a victim. Moreover, the Ombudsman is even not obliged to explain this decision. According to some experts, this exemplifies that the current Polish law on equal treatment does not implement properly the Race Directive (art. 13(2)) in the field of legal assistance to victims of discrimination in pursuing their complaints about discrimination.¹⁰⁷

Examples of NGO Good Practice

Koalicja na rzecz Równych Szans (the Coalition for Equal Chances) is a coalition of NGOs working in the field of anti-racism and anti-discrimination. It was created to actively comment on any drafts of legislation related to racism, discrimination and equal treatment and eventually to monitor the whole legislation process.

¹⁰⁴ Ibid.

¹⁰⁵ Note that this issue was also mentioned in the memorandum of the Senat, the upper chamber of the Parliament. See: Druk nr 3632, 25 November 2010 r.

¹⁰⁶ The Ombudsman Act, Journal of Laws of 1987, no 21, item 123 with latest amendments

¹⁰⁷ Ł. Bojarski, *News Report. New Polish equality body – illusory or real?*, June 2011, available at: <http://www.non-discrimination.net/content/media/PL-19-PL-19-problems%20with%20equality%20body.pdf>, accessed 31 August 2011.

More information is available at:

http://www.ptpa.org.pl/index.php?option=com_content&view=article&id=116&Itemid=65

XIII. Migration and integration

The National Programme on Social Protection and Social Inclusion 2008-2010, was adopted by the Government in December 2008. The document sets out three main priorities. The first concerns the prevention of poverty and social exclusion among children by improving the income of the family, the development of childcare services, ensuring better access to education and supporting children from disadvantaged families. The second priority identified was integration through activation. As part of this, a social economy and the tools for active inclusion will be developed. Within this priority, the situation of disabled people shall improve, mainly by facilitating their employment and creating legislation on the prevention of discrimination. Finally, the third goal concerns access to high quality social services, in particular, the development of social housing and improving the education system.¹⁰⁸ Only under the second priority does the National Programme identify refugees as a group at risk of social exclusion, however, “[t]he experience of many countries of Western Europe shows that there are no comprehensive measures facilitating the inclusion of this group, which may result in their social exclusion and potential conflicts within the society.”¹⁰⁹

Poverty and social exclusion are problems in Poland, however, the knowledge about these issues is rather general, and identification methods, as well as the potential solutions for improving this situation, are poor. According to available data, around 5% of Poles live under the guaranteed minimum income.¹¹⁰ Despite that, past and current governments have not been able to tackle the problem in a comprehensive way. Furthermore, Poland does not have a strategy on homelessness: work on a draft document began in 2008, but the Ministry of Social Policy and Labour announced that it will be postponed until 2011. However, as mentioned above, homelessness among refugees constitutes a serious problem.

Accession to the EU and an increase of migration to Poland has generated new challenges. Most of local authorities do not have any kind of strategy on social inclusion and poverty, thus the social problems suffered by migrants are not highlighted. One of the major challenges, according to academics and experts in the field, is the inclusion of the local authorities in developing regional and local strategies and building on these to create counter-poverty activities.¹¹¹

¹⁰⁸ MLSP, *National Strategy Report On Social Protection And Social Inclusion 2008-2010*, December 2009, available at: <http://www.mpips.gov.pl/index.php?gid=1139>, accessed 30 August 2011.

¹⁰⁹ J. Auleytner, *Strategia walki z ubóstwem w Polsce? Diagnoza i zadania na lata 2009-2010*, in: *Księga Ubogich a.d. 2009*, Warsaw 2009, p. 20.

¹¹⁰ *Ibid.*, p.21.

¹¹¹ *Ibid.*, p. 30.

The 'Special Programme for the Roma Community' in Poland seems to be a good example of social inclusion and increasing civic, political and cultural participation of ethnic minorities living in Poland. As a result of a three year pilot programme, in 2004 the Government decided to start a permanent programme aiming to improve the education, social and living conditions, health, employment opportunities, security, culture, and civic education of the Roma Community. In 2010, 316 actors (including local authorities and 77 Roma NGOs) conducted 773 different projects for the total sum of 12 825 47 zlotys.¹¹²

In general, "Poland lacks of integration strategy for its non-EU residents is reflected in its low MIPEX scores in most areas (...) [and] since 2007, Poland's minor improvements (+1 on MIPEX scale) were not enough to keep up with other countries catching up on integration."¹¹³ Poland reached the European average only in regard to family reunion and long-term residence (respectively 67 and 65). Political participation was marked 13% (29th place) and anti-discrimination 36% (27th place) which confirmed that Poland has to improve its integration policy. MIPEX also showed that Polish schools are not prepared to integrate foreign pupils into the classrooms and do not respond to the needs of a diverse student body. The mark for integration was below the European average, which means that the education system in Poland is slightly unfavourable for the integration of migrant pupils.¹¹⁴

Examples of NGO Good Practice

The project "**Migration and Integration in practice**" conducted by the **Fundacja Rozwoju "Oprócz Granic"** aims at assisting migrants in building their network of contacts. A discussion club is open for any person who wants to join and share his/her experience, learn about Poles and Polish culture as well as practice Polish language.

More information is available at: <http://www.mip.frog.org.pl/>

¹¹² MoIA, *Sprawozdanie z realizacji...*, op.cit.

¹¹³ Migration Integration Policy Index III, February 2011, p. 152.

¹¹⁴ *Ibid.*, p. 16.

XIV. National recommendations

Employment

- Groups vulnerable to racism and discrimination shall be provided with knowledge and information on their rights and the obligations of employers.
- The authorities have to monitor the situation of foreign employees in Poland more closely in order to prevent their exploitation.

Housing

- The authorities should develop a special social programme aiming at assisting homeless refugees and migrants.

Education

- The education system in Poland should adapt to the multi-religious and multicultural environment. The Ministry of Education should develop and implement relevant strategies and education programmes.
- Independent research has to be carried out to determine the reasons behind the issuing of decisions to place Roma children in special schools and classes. This study should also assess previously issued decisions.

Health

- In urgent cases free health care should be provided to all migrants, including undocumented migrants, and in particular to children and pregnant women.
- The authorities should develop a special programme aiming at facilitating communication between physicians and their foreign patients. An interpreter should be present, in particular if a foreign patient's command of the Polish language is limited.

Criminal justice

- An independent survey on ethnic profiling by the police and law enforcement agencies should be prepared.
- Racist crimes should be taken more seriously by the police and prosecutors. Training on hate speech and racist crimes should be provided to police officers and prosecutors.
- The authorities and sport clubs should fight against racism in sport more effectively, in particular by detecting perpetrators of racist crimes and prosecuting them. The authorities should also investigate and eventually prosecute more effectively the organisations propagating racism, Nazism and intolerance.

Access to goods and services

- Situation tests should be repeated each year, ideally in cooperation with municipal authorities and state bodies responsible for anti-discrimination and equal treatment.

Media

- The authorities should tackle the problem of the media broadcasting and publishing xenophobic reports or articles.
- A special body should conduct research on xenophobia and racism in the media in Poland.

General

- The Polish government should initiate and eventually create a system of free legal assistance to victims of racism and discrimination.
- Judges should be provided with training and seminars on discrimination and racism related matters.
- The authorities should immediately guarantee the Ombudsman additional financial resource, so the tasks appointed to it may be carried out without a further delay.
- A special programme on the integration of migrants should be created.
- The Polish Government should take necessary actions to ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- An annual report on the groups vulnerable to racism and discrimination should be prepared by the special body responsible for equal treatment, anti-discrimination policies and racism.

XV. Conclusion

The period covered by this report could be characterised as a period of missed opportunity in regard to improvement on the field of anti-discrimination and anti-racism. Even though the act on the transposition of certain European Union provisions in the field of equal treatment transposing the EU Race Directive into the domestic legal system, came into force in January 2011, it is, in fact, not a very good tool for fighting discrimination in Poland.

The UN Human Rights Committee reviewed the 6th periodic report on Poland and adopted, in October 2010, its Concluding Observations. The Committee was concerned about the rise of racial hatred complaints filed with law enforcement agencies, and noted the low numbers of investigations and low prosecution rate. Anti-Semitism, physical attacks, desecration of Synagogues and Jewish cemeteries were also highlighted. Furthermore, the Committee was concerned about the situation of Roma community in Poland, in particular, its marginalisation, and discrimination in education, housing, and employment. Finally, an increase in hate speech and discrimination against sexual minorities was identified as a major challenge.¹¹⁵

Indeed, racism and discrimination constitute serious problems in Polish society. In particular, the lack of knowledge on what discrimination and racism are among politicians, civil servants, police officers, prosecutors and finally, society, makes an improvement in this field barely possible. An increase in verbal and physical attacks on people of colour, racism in football stadiums, as well as hate speech on the Internet are the major challenges, that the Polish authorities have to tackle in the upcoming period of time. Unfortunately, a comprehensive policy on combating racism and discrimination has not been developed yet and the process of proper implementation of the EU Race Directive took years to finish. This only shows that the government is neither capable nor willing to improve in the field of anti-racism and anti-discrimination. Experts underline that there is no comprehensive and coordinated anti-discrimination policy in Poland and the majority of initiatives are initiated by civil society, not the authorities. Moreover, there is a lack of cooperation between the government, bodies responsible for anti-discrimination policies, and the civil society.¹¹⁶ This missing element is a crucial one, if Poland aims to have a well developed anti-racism and anti-discrimination policy.

¹¹⁵ UN Human Rights Council, *Consideration of reports submitted by States parties under article 40 of the Covenant. Concluding observations of the Human Rights Committee. Poland*, CCPR/C/POL/CO/6, October 2010.

¹¹⁶ K. Śmiszek, *Polityka równościowa bez ambicji*, August 2011, available at: <http://zielonewiadomosci.pl/tematy/rownosc/bez-ambicji-w-kwestii-rownosci/>, accessed 31 August 2011.

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Annex 1: List of abbreviations and terminology

ALI – Association for Legal Intervention

FRA – Fundamental Rights Agency

HFHR – Helsinki Foundation for Human Rights

IPA – Institute of Public Administration

KRRiT - National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji)

MLSP – Ministry of Labour and Social Policy

MoE - Ministry of Education

MoIA – Ministry of Interior and Administration

NGO – Non-governmental Organisation

PIP - National Labour Inspectorate (Państwowa Inspekcja Pracy)

PMF – Polish Migration Forum

PSAL – Polish Society on Anti-discrimination Law

RSD – Refugee Status Determination

