



european network against racism

ENAR Shadow Report 2011-2012

ENAR SHADOW REPORT

Racism and related discrimination 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 in 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 racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

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1. Executive summary

Racism, discrimination and rising rates of hate speech directed against ethnic, religious and sexual minorities remain a major concern in Poland. People of African descent, migrants, particularly undocumented migrants, Roma and Muslims are vulnerable to discrimination.

Polish authorities have been largely passive in addressing this issue. The Parliament recently abandoned a bill introducing civil partnerships as well as proposed amendments to the Penal Code introducing new grounds for hate speech. These were considered to be too controversial both by the right-wing opposition and by members of parliament from the ruling party.

There is no comprehensive **state policy countering racism and related discrimination** and these issues are poorly understood by state actors including prosecutors and law enforcement bodies. The seriousness of acts motivated by racism, intolerance and hatred is often underestimated and many such acts are not recognised as criminal offences. When they are prosecuted the courts often impose very lenient sanctions such as fines and probationary sentences. A study carried out by the Office of the Prosecutor General indicates incidents concerning racism, hate speech and discrimination are poorly investigated and prosecuted. Many investigations are discontinued due to failure to identify perpetrators.

Some experts consider that Poland has not created an **equality body** in compliance with the Race Directive. At present, the role of equality body is played by the Ombudsperson. However, the Polish constitution limits the powers of the Ombudsperson to interact with non-state agents. The Ombudsperson also faces considerable difficulty in carrying out her work due to a lack of financial resources.

Hate speech in the Internet is not adequately addressed by either state policy or law. Hate speech in online comments is often dismissed and is rarely considered crime at all. The list of grounds for hate speech provided for in the Penal Code is limited. There is a clear need to extend these grounds to cover hate speech directed towards ethnic minorities and disabled persons.

Little research has been conducted on the situation of the **Muslim community** living in Poland. The lack of data has made it very difficult to provide a comprehensive analysis. One major problem identified is a narrative on Islam and Muslims in the media. Muslims are often associated with terrorism and fundamentalism. Journalists do not report objectively when covering this particular community. Media coverage of Muslims is often limited to only the most controversial and sensationalist stories. State authorities and civil society have done little to counter this problem.

Muslim migrants (particularly those who are visibly different from the majority population) **and women wearing hijab** encounter discrimination as well as psychical and verbal abuses. They are targets of racist violence and hate

speech. Discrimination against these groups is most serious in the fields of **employment and access to goods and services.**

Migrants living in Poland have difficulty in accessing housing, goods and services, education and health services. Moreover their political and social engagement is limited by law and state policy. **Many of those who have been granted international protection** are at risk of homelessness and face discrimination in access to **housing** and in some cities in Poland, in access to council housing.

Undocumented **migrant women** face difficulties in accessing **healthcare** since treatment during pregnancy is only provided in emergency situations. In addition it must be provided by emergency medical teams outside a hospital to be free of charge.

Roma children are particularly vulnerable to discrimination in **education.** Roma children are sometimes placed in special schools designed for children with learning difficulties. A recent study has revealed that these children are often capable of participating in mainstream education. The Roma community also face discrimination in accessing goods and services and in the field of employment.

People of African descent, Roma and Muslim migrants are vulnerable to **ethnic profiling and violent attacks.** Police and law enforcement bodies often ignore racial motivation behind such crimes.

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3. Introduction

The report covers the period from March 2011 to March 2012 and assesses discrimination and racism in Poland. This edition focuses in particular on the Muslim community and Islamophobia (for more see section 5).

The period covered by this report was rich in political developments. The Civil Platform (Platforma Obywatelska - PO) was successful in the parliamentary elections. At the beginning of 2011 the Equality Body - the Ombudsperson - began to take action in the fields of discrimination, intolerance and equal treatment. A new Government Plenipotentiary for Equal Treatment was appointed. This was welcomed as a positive step by NGOs. However, the Parliament has been reluctant to pursue projects concerning penalisation of hate speech directed against sexual minorities and the introduction of civil partnerships between hetero and homosexual couples.

The Roma, persons of African descent and persons originating from Arab countries are vulnerable to intolerance, racisms and discrimination. Migrants, particularly those without proper documentation, face discrimination in housing, employment, education and health. Hate speech is a growing problem in Poland and thus there is a need to change the mentality and approach of prosecutors, law enforcement officers and judges. At present crimes motivated by hatred are not taken sufficiently seriously by these institutions.

There is still no comprehensive policy tackling anti-racism and anti-discrimination or the issues relating to migration. According to several experts the government is not interested in pursuing greater equal treatment and its activities regarding these matters have been lethargic.

This report is divided into three parts, the first concerns general situation of vulnerable groups and the Muslim community. The second part, beginning from section six, examines racism and related discrimination in the fields of housing, education, employment, access to goods and services, media and health. It also explores political participation and criminal justice related issues. The last sections present good practices, overall assessment of fundamental rights protection in Poland and list recommendations.

4. Significant developments in the country during the period under review

The main highlights of the year under review include parliamentary elections, the appointment of a new Government Plenipotentiary for Equal Treatment, the beginning of regularisation of undocumented migrants, continuing discussion over the Act on transposition of certain European Union's provision in the field of equal treatment (hereinafter the Act on Equal Treatment) (hereinafter the Act on Equal Treatment)¹ were the main highlights during the year under review. Poland held the Presidency of the European Union from July to December 2011.

In October 2011 Parliamentary elections took place in Poland. For the first time since the fall of communism the government has been re-elected. The Civic Platform (PO) won 207 seats in the Lower Chamber and then formed a coalition with the Polish People's Party (Polskie Stronnictwo Ludowe - PSL). Altogether they have 235 votes and thus a majority in the 460-seat Lower Chamber of the Parliament. Donald Tusk remains the Prime Minister and Bronisław Komorowski the President.

For the first time transgender, homosexual and Black persons were elected to the Parliament and women were appointed as Marshall and vice Marshall (the speaker and vice speaker) of the Lower Chamber.

After elections, in December 2011 the new Government Plenipotentiary for Equal Treatment was appointed. Elżbieta Radziszewska, who had been widely criticised for her work, was replaced by Agnieszka Kozłowska-Rajewicz. Agnieszka Piotrowska from Feminoteka said that compared to Radziszewska the new plenipotentiary was much more suitable for this post, however it was not still the best possible nomination.² She added that while Kozłowska-Rajewicz was not an expert on equal treatment, her knowledge and understanding of the matter was much better than Radziszewska's.

The Ombudsperson who, according to the Act on Equal Treatment, plays the role of Equality Body as of the beginning of 2011, has struggled to carry out her obligations to counter discrimination and intolerance due to a lack of funding.

The Act on Equal Treatment remains a matter of discussion. The Equality Body plays an important role in assisting victims of discrimination and inequality, however under the Polish Constitution the Ombudsperson may deal with cases between an individual whose freedoms or rights are infringed and the public institutions. Private parties are thus excluded.³ The

¹ Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania, Journal of Laws of 2010, No. 245, item 1700.

² J. Piotrowska, *Nowa pełnomocniczka ds. równego traktowania? Pół kroku w przód*, [in:] Krytyka Polityczna, 17.11.2011, available at: <http://www.krytykapolityczna.pl/Opinie/PiotrowskaWyborKozlowskiej-Rajewicztopolkrokuwprzod/menuid-1.html> [accessed 09.09.2012].

³ For more see: M. Fagasiński, *ENAR Shadow Report. Racism and related discriminatory practices in Poland*, Brussels 2012, p. 35.

Ombudsperson states that an individual who has faced discrimination by a private party can only be provided with advice. If a case concerns for example discrimination in the field of employment the Ombudsperson may refer it to the National Labour Inspectorate (Państwowa Inspekcja Pracy - PIP).⁴

According to experts including Lukasz Bojarski, this indicates that the Race Directive⁵ has not been properly transposed to the Polish legal system. There is a concern that the grounds for discrimination listed in the Act on Equal Treatment are too restrictive. This is in contrast with the provisions of the Labour Code which deal with employment related discrimination. The use of the words 'in particular' in the Labour Code indicates that the grounds of discrimination listed are not exhaustive. Similarly wording has not been used in the Act on Equal Treatment.⁶

Twice the Parliament has dropped a bill on civil partnerships. In May 2011 the Democratic Left Alliance (Sojusz Lewicy Demokratycznej - SLD) proposed to allow gay and lesbian couples but also heterosexual couples to sign "an agreement of civil partnership".⁷ A similar project was introduced again at the beginning of 2012, after the parliamentary elections (and eventually voted against in July 2012). The Law and Justice (Prawo i Sprawiedliwość - PiS), the biggest opposition party, argued that 'civil partnerships are affirmation and promotion of homosexuals',⁸ Civic Platform's Parliamentarians were divided, one group supported, while the others were against it.⁹ Palikot's Movement (Ruch Palikota - RP) and SLD campaigned in favour of the project. According to an opinion poll 83% of respondents support civil partnerships between heterosexual couples and 10% are against it, while 65% oppose allowing homosexuals to sign a partnership agreement, 25% support it, 10% do not have opinion on that issue.¹⁰

In August 2011, the President signed a bill on the regularisation of undocumented migrants.¹¹ From January 2012 until 2nd July 2012 only those non-citizens who met certain requirements could regularise their stay. A migrant had to show that s/he had resided in Poland since 20 December 2007 without interruption. The regularisation process was also open to those who had resided in Poland since 1 January 2010 but whose prior applications for international protection had been refused as well as to asylum-seekers whose second or subsequent application for refugee status had been determined as

⁴ Information available at the Ombudsperson's web-page: <http://www.rpo.gov.pl/?md=8979> [accessed 09.09.2012].

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 For more see: M. Fagasinski, *ENAR...*, op.cit., pp. 33-35.

⁷ *Gazeta Prawna*, *Projekt SLD: związki partnerskie także dla osób tej samej płci*, 16.05.2011, available at: http://prawo.gazetaprawna.pl/artykuly/514316,projekt_sld_zwiazki_partnerskie_takze_dla_osob_tej_samej_plci.html [accessed 09.09.2012].

⁸ *Wprost*, *PiS: związki partnerskie to afirmacja homoseksualizmu. SLD osamotnione*, 17.05.2011, available at: <http://www.wprost.pl/ar/244914/PiS-zwiazki-partnerskie-to-afirmacja-homoseksualizmu-SLD-osamotnione/> [accessed 09.09.2012].

⁹ *Polskie Radio*, *Kwestia związków partnerskich: "nie bardzo rozumiem co lewica chce"*, 03.06.2011, available at: <http://www.polskieradio.pl/5/3/Artykul/380094,Kwestia-zwiazkow-partnerskich-nie-bardzo-rozumiem-co-lewica-chce> [accessed 09.09.2012].

¹⁰ CBOS, *Komunikat z badań. Opinie o legalizacji związków partnerskich*, BS/76/2011, 06.2011.

¹¹ [Act of 28 July 2011 on legalisation of stay of some foreigners in the territory of the Republic of Poland and on amendments to the Act on granting protection to foreigners in the territory of the Republic of Poland and to the Act on Foreigners](#) (Journal of LAws of 2011, No 191, item 1133).

of 1 January 2010. Applicants were required to prove they had lived continuously in Poland.

There were no significant changes to migrant integration policies in the period under review. The Polish Migration Strategy,¹² a document prepared by the Ministry of Interior, was not approved by the Government until July 2012. In 2011, 6887 persons lodged an application for refugee status, 157 asylum-seekers were recognised as refugees, 207 applicants granted subsidiary protection while 2 739 applications were refused. The majority of asylum-seekers were from the Russian Federation (4 305), Georgia (1 735) and Armenia (216). Refugee status or subsidiary protection were granted to applicants from Belarus (24 positive decisions), Eritrea (13), Iraq (24) and the Russian Federation (262).¹³

In June 2011 the Minister of Foreign Affairs announced during his visit to Tunisia that he will be bringing a group of refugees to Poland. The refugees in question are from Nigeria and Eritrea and were staying in a refugee camp near the border with Libya. The Minister added that these persons will be Christians only.¹⁴ International organisations, such as the High Commissioner for Refugees (UNHCR), and NGOs underline that the most important factor to consider are vulnerability, health condition and gender. Religion and belief should not play a role in the selection process.

Poland has not yet developed a National Roma Integration Strategy. According to the Ministry of Administration and Digitalisation the primary instrument which provides state aid to the Roma community is the Programme for the Roma Community in Poland for the Period 2004-2013. According to the Ministry the Programme is complementary and reflects all priorities mentioned in the EU Framework for National Roma Integration Strategies up to 2020.¹⁵

Finally, the Ombudsperson and several NGOs have expressed concern over a growing number of racially-motivated and xenophobic crimes and incidences of verbal and physical attacks against Muslims, Roma and people of African descent. The situation in Białystok has been particularly difficult. In her letter to the Prosecutor General, the Ombudsperson requested that the necessary measures be taken to tackle these crimes.¹⁶

¹² *Polityka Migracyjna Polski - stan obecny o postulowane działania*, available at:

http://bip.msw.gov.pl/portal/bip/227/19529/Polityka_migracyjna_Polski.html [09.09.2012].

¹³ Statistics provided by the Office for Foreigners, available at: <http://www.udsc.gov.pl/Statystyki,229.html> [accessed 09.09.2012].

¹⁴ *Ibid.*

¹⁵ A letter from the Minister of Administration and Digitalisation to Ms Françoise Le Bail Directorate-General for Justice European Commission, number DWRMNIÉ – WMR – 6522-37/2011/MR, dated 28 December 2011, available at: http://ec.europa.eu/justice/discrimination/roma/national-strategies/index_en.htm [accessed 02.09.2012].

¹⁶ A letter from the Ombudsperson to the Prosecutor General, number RPO-683675-II/II/PS, dated 11 October 2011.

5. Special focus: Islamophobia

This year's Shadow Report focuses on the Muslim community and Islamophobia. Each chapter will contain a special paragraph dedicated to the situation of Muslims in Poland.

Before the Second World War Poland was a multiethnic country, with around 6,000 Tatars living in the North East (now Lithuania) who had settled there in 14th century. They spoke Polish and were well-integrated in society. In 1925 Tatars established the Muslim Religious Association (Muzułmański Związek Religijny w Rzeczypospolitej Polskiej - MZR).¹⁷ In 1936 a bill on relations between the MZR and the State was passed in the Parliament¹⁸ and has been in force since then. The MZR is now one of 15 churches and religious associations whose relations with the State are regulated by law. These entities have legal personality, are independent and may apply for state funding for maintaining prayers houses or cemeteries.

Apart from MZR there are 3 other Muslim religious associations in Poland: Stowarzyszenie Jedności Muzułmańskiej (Muslim Unity Society), Stowarzyszenie Muzułmańskie Ahmadiyya (The Ahmadiyya Muslim Community) and Liga Muzułmańska w Rzeczypospolitej Polskiej (Muslim League in Poland).¹⁹ The first two were registered in 1990 and the Muslim League was registered in 2004.

The MZR is the oldest Muslim religion organisation in Poland and is associated with Tatars living in Poland.²⁰ Shia Islam is represented through the Muslim Unity Society, the remaining three are of Sunni denomination. The MZR and the Arab League are the biggest Muslim religious organisations in Poland, with Mosques and prayer housing in the main cities.

According to various sources there are between 25,000 and 60,000 Muslims living in Poland.²¹ There are a number of communities within the Muslim population. These are:

- Tatars who live near Białystok, close to the border with Lithuania and Belarus, they are Polish citizens and do not differ from the general society;
- Chechens, who are primarily asylum-seekers and refugees;
- Muslim migrants, mainly students who stay in the biggest cities around Poland. These individuals come from a variety of ethnic backgrounds;
- Converted Polish citizens

Vulnerability to discrimination and racism depends on a number of elements. Religion is not a predominant factor; legal status and ethnic origin often play a

¹⁷ Cz. Brzoza and A. L. Sowa, *Historia Polski 1918-1945*, Cracow 2009, p. 138.

¹⁸ Ustawa o stosunku Państwa do Muzułmańskiego Związku Religijnego w Rzeczypospolitej Polskiej, Journal of Laws of 1936, No 30, item. 240, with later amendments.

¹⁹ A full list available at the Ministry of Interior's web-page: http://www.msw.gov.pl/portals/pl/92/9108/Koscioly_i_zwiazki_wyznaniowe_wpisane_do_rejestru_kosciolow_i_innych_zwiazkow_wy.html [accessed 09.09.2012].

²⁰ Tatars are also an ethnic minority in Poland recognised under Polish law.

²¹ Various sources provide different data. MZR estimates the number of Tatars for 5,000 and Muslims living in Poland for around 25,000. Other sources provide different numbers from around 20,000 up to 60,000.

greater role in determining vulnerability to discrimination. Many Muslim migrants are victims of racist violence because of their skin colour rather than their religion. They are also associated with terrorism and Islamic fundamentalism. Being a migrant, asylum-seeker or refugee is an additional element increasing susceptibility to discrimination. Undocumented migrants are especially vulnerable.

Muslim women face different levels of discrimination according to whether or not they wear the hijab and whether or not their ethnic origin differs from that of the majority population. Women who wear the hijab often encounter hate speech, discrimination or even assault. They face discrimination in employment; they are often rejected for jobs that require client contact or asked to remove the hijab when dealing with clients. They are also victims of verbal and physical attacks on streets due to the way they dress.

Common stereotypes in Poland concern women's role in Islam. Wearing a hijab or veil is perceived as a sign of dependency on men and is considered 'enslavement' by some people in Poland.

Due to the relatively small size of the Muslim population in Poland, there are no regions where relations with the Muslim community are especially tense. The Muslim community is dispersed throughout the country and is not concentrated in particular regions or neighbourhoods within cities. However, in Białystok and the Podlaskie Voivodeship there have been a high number of offences motivated by racism and hatred. In 2011 there were 21 investigations carried out by police²² under article 256 of the Penal Code²³ (i.e. hate speech or public propagation of a totalitarian or fascist regime) and the prosecutor's offices in the region registered 45 cases concerning racist and xenophobic crimes. In comparison in Warsaw there were respectively five and 60 cases registered.

August 2011 saw a violent attack on the Muslim Cultural Centre in Białystok. A group of individuals broke in, destroyed the interior and tried to set the building on fire.²⁴ In Poznan and other cities Islamophobic pamphlets have been distributed and posters displayed near prayer houses and Islam Cultural Centres. In Warsaw some groups have protested against plans to build a Mosque. They argue that the centre will promote Islamic fundamentalism and recruit terrorists. According to a public poll Arabs are the second most disliked group by Poles; 46% of respondents do not like them. 32% and 37% of Poles dislike Libyans and Turks respectively.²⁵ The general public associates Islam and Muslims with terrorism. This image is further fuelled by the media coverage on the situation in the Middle East and other European states. A quick analysis of published texts and broadcasted radio and TV auditions shows that often Muslim and Islam are used together with the words such as fear, attack, war, terrorism, fundamentalism, suicide or jihad. Islam is often

²² Statistics provided by the Police Headquarters in Warsaw.

²³ Kodeks Karny, Journal of Laws of 1997, No. 88, item 553, with later amendments.

²⁴ Gazeta Wyborcza, *Atak na Centrum Muzułmańskie. Ogień w domu modlitwy*, 21.08.2011, available at: http://miasta.gazeta.pl/miasto/1,96987,10148736,Atak_na_Centrum_Muzulmanskie_Ogien_w_domu_modlitwy.html [accessed 09.09.2012].

²⁵ CBOS, *Komunikat z badań. Stosunek Polaków do innych narodów*, BS/22/2012, 02.2012.

depicted as something evil or threatening. For example the Minister of Justice in an interview given in June 2011 on civil partnerships said that "If we follow this road, sooner or later we will end up as Ancient Rome did. Barbarians will come, Muslims will come to Europe, Europe will become Islamist."²⁶

More than 30% of respondents in a public poll identified Muslims, Jehovah Witness and Buddhists as the religious minorities which are the most vulnerable to unequal treatment.²⁷ In another public poll²⁸ 34% of respondents stated that there should the main parliamentary meeting room should only display the crucifix, 36% were opposed the display of any religious symbols in that room, while 19% were in favour of displaying other religious symbols.²⁹

A study on the media coverage of the attacks in Oslo on 22nd of July 2011 on the main TV channels in Poland showed that almost all materials aired, journalists' views and guests' comments referred to Muslims, Islamic fundamentalism, Norwegian engagement in Afghanistan and Libya or Al-Qaeda.³⁰ Later, when more information emerged about the perpetrator of the attacks the media used expressions such as right-wing extremist, Christian extremist, murderer, bandit, scoundrel, monster and many others but rarely terrorist.³¹

Muslims are portrayed negatively by the media; often as terrorists and radicals. The media coverage is concentrated on the most sensationalist stories only. According to the Muslim community the Polish media are not objective when discussing Islam and journalists have a limited knowledge of Islam and Muslim tradition and culture.

While respondents expressed little interested in the political situation in the Middle East, more than 55% consider that a conflict with Islam is inevitable. Less than 30% were believed that a common platform of understanding is possible.³² A simple experiment conducted by a group of high school students in Wrocław showed a range of hostile and discriminatory behaviour towards the Muslim community. Students wearing a veil or keffiyeh were followed in shops and heard offensive comments on the street.³³

Additional information on racism and related discrimination is provided in each subchapter in the sixth section of this report. Due to a lack of official reports and data on the Muslim community and Islamophobia in Poland, the author collated information on the basis of a desk research and interviews conducted with Muslim minority representatives. Due to time and resources constrains

²⁶ Full interview is available here: <http://www.radiozet.pl/Programy/Gosc-Radia-ZET/%28offset%29/30> or <http://www.youtube.com/watch?v=FojGRQY4bzE>

²⁷ P. Antosz, *Równe Traktowanie Standardem Dobrego Rządzenia. Raport z badań sondażowych*, Cracow 2012, p. 40.

²⁸ The poll was conducted just after the Palikot's Movement proposed to remove the cross from the main chamber in the Parliament.

²⁹ CBOS, *Komunikat z badań. Obecność krzyża w przestrzeni publicznej*, BS/153/2011, 12.2011.

³⁰ E. Stasiak-Jazukiewicz & M. Jas-Koziarkiewicz, *Rola telewizji w stanach nadzwyczajnych. Na przykładzie sposobu relacjonowania tragicznych wydarzeń z 22 lipca w Oslo i na wyspie Utoya w Norwegii*, 09.2012.

³¹ *Idib.*, a full list p. 46.

³² Foundation for European Studies, *Monitorowanie skutków przebiegu polskiego udziału w międzynarodowych interwencjach w Afganistanie*, available at: <http://feeps.pl/pl/afganistan> [accessed 09.09.2012].

³³ Gazeta Wyborcza, *Niech suka wraca do Iraku*, 12.08.2011, available at: http://wyborcza.pl/1,76842,10107670,Niech_suka_wraca_do_Iraku.html?as=2&startsz=x [accessed 09.09.2012].

the author focused only on the situation in Warsaw, Cracow, Białystok, Lublin, Łódź, Poznań, Gdańsk and Wrocław. The author tried to assess the situation of different groups within the Muslim community potentially vulnerable to racism, discrimination and unequal treatment. The information presented in this report does not exhaust the topic and is only provided to indicate the main problems faced by the Muslim community living in Poland. The author is aware of the need for additional studies in order to explore some of these issues in greater depth.

6. Access and full participation in all collective areas of society

Poland is a relatively homogenous country; the majority of the population are Catholic and speak Polish. According to the most recent census 38.5 million people live in Poland, more than 98% of whom were born in Poland. The number of foreign nationals is small, only 0.2% of total population. One third of non-citizens live in Mazowieckie Voivodeship, 8.5% in Dolnośląskie and 7.5% in Małopolskie.³⁴

In the 2011 census, for the first time respondents were asked about their ethnic and national background. Around half a million of them (1.4% of the total population) declared a non-Polish ethnicity and nationality. The most common were Silesian (400 000), German (49 000) and Kashub (17 000). According to the census there are 12 000 Roma living in Poland.

It is difficult to determine the number of Vietnamese and Chinese migrants living in Poland. However, according to a recent study there are around 25 000 Vietnamese (40% of whom are undocumented migrants) and 4 000 Chinese who live mostly in or near Warsaw.³⁵

By the end of 2011, 100 298 foreign nationals had a valid residence card (karta pobytu), almost half of whom were from Ukraine (29 746), the Russian Federation (11 675) and Belarus (9 249). There were fewer than 7 000 asylum applications lodged in Poland, around 320 applicants in total were granted refugee status or subsidiary protection. For the same period, 4338 foreign nationals applied for and 3700 were granted a settlement permit (zezwoleńie na osiedlenie się). More than 33 000 foreign nationals applied for a permanent residence permit (zezwoleńie na zamieszkanie na czas oznaczony) and 29,653 granted permits. The majority were from Ukraine, Vietnam, Romania, China, India, Russia, Armenia, Belarus and Turkey. In 2011 the Border Guard carried out 1 134 deportations and 6,302 non-citizens were obliged to leave voluntarily the territory of Poland.³⁶

Once a year, a public opinion survey "Poles' attitude to other nations" is published by one of the Public Opinion Research Centres. People were asked to identify which countries they liked and disliked. The 2012 survey shows a small change in comparison to previous years. The most popular nationalities were: Czechs, Slovaks, Italians, Norwegians and Spaniards (more than 50% of respondents like these nations). The most disliked nations were Turks (37% of respondents do not like this nation, 28% like and 25% are indifferent), Libyans (respectively 32%, 26% and 26%), Roma (50%, 20%, and 24%), Arabs (46%, 20%, and 23%) and Romanians (39%, 26%, and 26%). Jews and Russians were liked and disliked in roughly similarly number; 29% of

³⁴ GUS, *Wyniki Narodowego Spisu Powszechnego Ludności i Mieszkań 2011. Podstawowe informacje o sytuacji demograficzno-społecznej ludności Polski oraz zasobach mieszkaniowych*, available at: http://www.stat.gov.pl/gus/5840_12766_PLK_HTML.htm [accessed 09.09.2012].

³⁵ K. Wysińska, *Organizacje wietnamskie i chińskie w Polsce. Wstępna analiza instytucjonalnej kompletności społeczności wschodnioazjatyckich w Polsce*, Warsaw 2011, p.9.

³⁶ Statistics provided by the Office for Foreigners, available at: <http://www.udsc.gov.pl/Zestawienia.roczne,233.html> [accessed 09.09.2012].

respondents do not like Jews, 30% are indifferent and 33% like this group. Similarly 33% of Poles do not like Russians, 34% do and 27% are indifferent.³⁷

The percentage of people who expressed a negative attitude towards Turks, Libyans, Roma, Romanians and Arabs is much higher than the percentage of those who expressed a positive one. Towards the Roma and the Arabs it is almost twice as high. Roma are particularly vulnerable to racism and discrimination in the fields of employment, education, housing, health, access to goods and services and political participation. Migrants, asylum-seekers and refugees also encounter serious discrimination in their day-to-day lives. There has been a steady rise in cyberhate and hate speech against sexual and ethnic minorities. People of African descent frequently face verbal and physical assaults. Anti-Semitism and xenophobia remain a significant problem in Poland.

Gender, age, sexual orientation and identity, disability or mental illness often lead to multiple discrimination. A public survey revealed that 12% of respondents have experienced unequal treatment because of their age, gender (10%), political opinion (9%), economic status (9%), disability (8%) and only 1,4% because of their non-Catholic religion.³⁸ Respondents identified Roma, Black persons, Jews and Arabs as the most vulnerable to unequal treatment in Poland.³⁹

³⁷ CBOS, *Komunikat z badań. Stosunek Polaków...*, op.cit.

³⁸ P. Antosz, *Równe Traktowanie Standardem...*, op.cit., p. 31.

³⁹ *Ibid.*, p. 38.

6.1 Racism and related discrimination in employment

6.1.1 Manifestations of racism and related discrimination in employment

There are widespread problems in the Polish labour market. As of December 2011, the unemployment rate was 12.5%, with 693,000 persons registered as unemployed. The majority of those registered are women (53,4%), persons over 50 years (22,3%) and young people (21%). There are 104,700 jobless disabled persons.⁴⁰

Unemployment among Roma is common. Only one quarter of household members aged between 20 and 64 are in paid employment (comparing to 55% of non-Roma) and 35% of respondents described themselves as unemployed (comparing to 15% of non-Roma).⁴¹ According to the Fundamental Rights Agency (FRA) more than 60% of Roma, aged 16 and above, reported that they have experienced discrimination in the past five years.⁴²

Non-citizens, in particular migrants, undocumented migrants and refugees, face discrimination in the field of employment. In 2011 the National Labour Inspectorate (PIP) examined 2200 companies which employed 14 500 non-citizens and reported violations in 49% of cases.⁴³ Association for Legal Interventions (ALI) survey shows that 65% of respondents working and living in Mazowieckie Voivodeship work informally even though 54% of them had a valid work permit.⁴⁴

This situation exposes non-citizens to abuse, racism and discrimination. One of the most common forms of exploitation is to pay lower salaries to immigrants than to Polish citizens or to not pay on time. Due to poor knowledge of the Polish language non-citizens sign contracts which they do not understand and in general they are not in a position to negotiate their working conditions. Non-citizens are treated differently at work; they often have to work longer hours than Polish citizens and cannot take a day off or holidays. Non-citizens who are employed in domestic work are particularly vulnerable to abuse.

More than 40% of respondents say that nationality has an influence on the wages offered to employees, but only 8% consider that religious belief is a factor. Disability, age and gender are the predominant reasons for inequality in pay.⁴⁵

The Muslim community experience discrimination in the workplace, particularly women wearing the hijab. For example one Muslim woman was not offered a job when she attended several job interviews in hijab, but was

⁴⁰ GUS, *Wyniki Narodowego Spisu Powszechnego...*, op.cit.

⁴¹ FRA, *The situation of Roma in 11 EU Member States. Survey results at a glance*, Vienna 2012, pp. 16-17.

⁴² *Ibid.*, p. 19.

⁴³ PIP, *Sprawozdanie z działalności Państwowej Inspekcji Pracy w 2011 roku*, Warsaw, 2012, pp. 118-125, available at: <http://www.pip.gov.pl/html/pl/html/02050000.htm> [accessed 09.09.2012].

⁴⁴ W. Klaus, *Polish employers compliance with migrating workers rights*, Warsaw 2012, p.9.

⁴⁵ P. Antosz, *Równe Traktowanie Standardem...*, op.cit., p. 117.

successful when she eventually interviewed without wearing hijab. Women wearing hijab are rarely employed for jobs which require contact with a client. One interviewee mentioned a case where a woman working in a fast food restaurant and was asked to remove her hijab.⁴⁶

6.1.2 Facilitating factors or protective measures to combat employment challenges

One of the main problems raised by NGOs and PIP is a lack of knowledge and awareness of rights among migrants who encounter discrimination in employment. Migrants are often reluctant to go to court for a number of reasons; the absence of an official contract places the burden of proving discrimination on the employee, migrants often plan to stay in the country for only a short while which makes it difficult to engage in long court proceedings. Finally, most migrants want to focus on earning money and are put off by the cost of litigation.⁴⁷

In July 2011 an obligation to sign a written contract with the migrant seasonal workers from Ukraine, Belarus, the Russian Federation, Moldova and Georgia was introduced for all employers.⁴⁸ It is hoped that requiring a written job contract will prevent discrimination and unequal treatment; seasonal workers coming from these countries do not need a visa to work in Poland in certain professions for a period of six months in a given year.

⁴⁶ An interview with a Muslim from Lublin. August 2012.

⁴⁷ W. Klaus, *Polish employers compliance...*, op.cit., p.9.

⁴⁸ Rozporządzenie Ministra Pracy i Polityki Społecznej z dnia 20 lipca 2011 r. w sprawie przypadków, w których powierzenie wykonywania pracy cudzoziemcowi na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę, Journal of Laws of 2011, No. 155, item 919.

6.2 Racism and related discrimination in education

6.2.1 Manifestations of racism and related discrimination in education

Problems identified in the education system in previous reports persist. The education system in Poland does not adequately address the needs of pupils with different ethnic, cultural and linguistic backgrounds. In particular Roma, migrants, asylum-seekers and refugees face direct and indirect discrimination in the education system.

In its annual report Amnesty International expressed ‘concerns over the detention of children alongside their adult relatives, who were being held solely for immigration purposes’.⁴⁹ According to reports from HNLAC, HFHR and ALI children held in these detention centres do not have a proper access to education, in spite of the fact that under the Polish Constitution education is compulsory until the pupil is 18 years of age. Migrant and asylum-seeking children accommodated in detention centres cannot leave the buildings to go to a local school. Instead, they are provided with a class in a detention centre which is not offered regularly and often is not provided by a qualified teacher.⁵⁰

Undocumented children often have difficulty sitting state exams. To be allowed to do so they must provide a school with a personal identification number (PESEL), which is only possible if their stay in Poland is regularised.⁵¹

The Roma also face discrimination in the education system. A recent FRA study showed that around 40% of Roma children aged 4 start compulsory education, attending preschool or kindergarten, compared to 60% of non-Roma children. Consequently only 25% of surveyed Roma household in Poland have members aged 20 to 24 who have at least completed general or vocational upper-secondary education. In non-Roma households the rate is around 85%.⁵² Only one out of three Roma youths has completed upper-secondary education. This has further negative consequences, such as reduced chances to enter the labour market and find a well-paid job.⁵³

Previous reports highlighted the need to carry out studies to assess the reasons for placing Roma children in special classes and schools. Indeed, the reasons behind this practice are not clear. A report was published by the Roma Association of Poland at the end of 2011 on the situation of Roma pupils in mainstream and special schools.⁵⁴ In total 77 pupils⁵⁵, 31 who were

⁴⁹ AI, *Annual Report 2012*, available at: <http://www.amnesty.org/en/annual-report/2012> [accessed 09.09.2012].

⁵⁰ Analiza przepisów dotyczących stosowania środków detencyjnych wobec małoletnich dzieci cudzoziemskich, available at: http://www.pomocprawna.org/images/stories/detencja/idcdetencjadzieci_analiza_prawna.pdf [accessed 03.12.2012].

⁵¹ FRA, *Fundamental rights of migrants in an irregular situation in the European Union*, Vienna 2011, p. 92.

⁵² FRA, *The situation of Roma...*, op.cit.

⁵³ *Ibid.*, p. 15.

⁵⁴ M. Kołaczek, J. Talewicz-Kwiatkowska (eds.), *Raport końcowy z projektu badawczego. Funkcjonowanie poznawcze i językowe dzieci romskich uczęszczających do szkół podstawowych specjalnych i masowych – konteksty społeczne*, Oświęcim 2011, p. 51.

⁵⁵ Between 6 and 16 years, 43 boys and 34 girls, attending a special (20 children) or mass school (57 children).

issued a certificate of mental disability, were interviewed and took part in a psychological examination. It was revealed that 52% (16 pupils) of those who were believed to have learning difficulties were fully capable of participating in mainstream education. Only 9 children were in fact mentally disabled.

Gazeta Wyborcza, a daily newspaper, quotes an unpublished report prepared by the Ministry of Interior according to which 20% of all Roma pupils attend special schools (in comparison to 2.8% non-Roma children).⁵⁶ In total in Poland 3,528 Roma pupils were required to attend schools during the 2010/11 school year.⁵⁷ One possible reason to place Roma pupils in special schools highlighted by experts on child education and NGOs is a lack of knowledge of the Polish language.⁵⁸ In practice, when relevant tests are carried out, Roma children do not understand questions asked in Polish or do not have sufficient command of the language to express themselves properly and thus are classified as mentally disabled and unable to follow a mainstream school curriculum.

6.2.2 Facilitating factors or protective measures to combat education challenges

Discussion is on-going concerning the need to implement a proper intercultural education and raise awareness of ethnic and national minorities among the Polish society. According to the Ombudsperson and several NGOs, the school curriculum does not cover the issues of racism, discrimination, xenophobia and hate speech.

In her letter to the Minister of Education the Ombudsperson stated that education on intolerance is vital to prevent incidents motivated by racism in the future. There is a need for a complex education curriculum addressed to all pupils and students. Education and training on equal treatment provided only by NGOs is not enough. The Minister of Education answered that the core curricula for all levels of education incorporate elements concerning human rights, human dignity and intolerance. Pupils and students are taught to understand and recognise racism, misogyny, anti-Semitism and xenophobia. The Minister added that any changes to the core curriculum could be introduced in 2015.⁵⁹

The Ombudsperson was concerned over stereotypes, violent attacks, discrimination and marginalisation of Roma community in Poland. She argued that lack of knowledge about the Roma fuels a negative attitude towards this community. She argued that information on Roma history and culture should

⁵⁶ Gazeta Wyborcza, *Romskie dzieci bezpodstawnie wysyłane do szkół specjalnych*, 27.10.2011, available at: http://wyborcza.pl/1,75478,10543315,Romskie_dzieci_bezpodstawnie_wysylane_do_szkol_specjalnych.html [accessed 09.09.2012].

⁵⁷ MAIC, *Raport z realizacji Programu na rzecz społeczności romskiej w Polsce*, 31.05.2012.

⁵⁸ Gazeta Wyborcza, *Romskie dzieci bezpodstawnie wysyłane do szkół specjalnych*, 27.10.2011, available at: http://wyborcza.pl/1,75478,10543315,Romskie_dzieci_bezpodstawnie_wysylane_do_szkol_specjalnych.html [accessed 09.09.2012].

⁵⁹ The Ombudsperson, *Przeciwdziałanie Przemocy motywowanej rasą, pochodzeniem etnicznym i narodowością. Analiza i zalecenia*, Warsaw 2012, pp. 73-74.

be added to school curricula and that the Ministry of Education should provide teachers with additional materials on these issues.⁶⁰

The Joint Commission of the Government and National and Ethnic Minorities (Komisja Wspólna Rządu i Mniejszości Narodowych i Etnicznych) underlined that a monitoring has to be created out to assess how schools teach on ethnic and national minorities and how a core curriculum on this issue is being implemented.⁶¹

According to different experts Polish education system does not address intercultural dialogue in an adequate manner, does not teach pupils about diversity or prepare them to be open to other cultures and minorities. Moreover Polish education system does not respond to the needs of migrants, refugees and Roma. They struggle to follow classes or understand what is being said. This hinders the learning process and creates a discrepancy between them and Polish students. Furthermore, many feel alienated and do not want to attend classes. Some parents are reluctant to send their children to school.⁶²

⁶⁰ A letter from the Ombudsperson to the Ministry of Education, number RPO-682473-V/II/MS, dated 30.11.2011.

⁶¹ MAIC, *Protokół z XXXI posiedzenia Komisji Wspólnej Rządu i Mniejszości Narodowych i Etnicznych, Białystok 22-23 lutego 2012*, available at: <http://mac.gov.pl/mniejszosci-i-wyznania/> [accessed 09.09.2012].

⁶² HNLAC, *Raport z wyników badań i obserwacji zrealizowanych podczas projektu „Kampania na rzecz uchodźców i działania monitoringowe w ośrodkach dla cudzoziemców w Bytomiu i w Grotnikach”*, Cracow 2011, available at: http://www.pomocprawna.org/index.php?option=com_content&view=article&id=99 [accessed 09.09.2012].

6.3 Racism and related discrimination in housing

6.3.1 Manifestations of racism and related discrimination in housing

Access to affordable housing is a major issue in Poland. While the problem concerns all of society, migrants, ethnic minorities and other vulnerable groups are particularly affected.

Discrimination against migrants and refugees in the field of housing is common. Influenced by stereotypes and xenophobia, landlords are often reluctant to let a flat to a foreign national. Moreover, many landlords are unwilling to sign agreements with migrant or refugee tenants. This leaves these groups even more vulnerable, for example if landlord requires them to vacate a flat at very short notice.⁶³

A lack of available council housing, difficulty in finding a job and potential reluctance on the part of landlords to rent flats to foreigners contribute to homelessness among refugees. For more detail please refer to the 2010 Shadow Report.⁶⁴

Equal access to council housing is not guaranteed to everyone. Pruszków, a city located 20 km west of Warsaw, indirectly discriminates against migrants by requiring prospective tenants to be registered in the city (zameldowany in Polish). Consequently the municipality will sign a rental agreement only with 'a citizen of Pruszków' what in practice automatically excludes all 'non-citizens'. It was reported that a refugee family, two disabled women with two children, were ineligible to apply for council housing and were obliged to rent a house from a private landlord.⁶⁵

Registration (zameldowanie) is mandatory in Poland. In order to register in a city or village a landlord must sign a document to confirm the applicant's presence in a specified flat or house and present a legal title to the property (for example a lease). Often migrants are trapped in a vicious circle; they do not have an agreement as the landlord does not want them to be registered as tenants. As a result they are ineligible for council housing.

A recent study revealed that foreign students living in Poland are usually accommodated in a separate dormitory, mainly for reasons of administrative convenience. However, this has a negative impact on their social integration and language skills.⁶⁶

NOMADA, a local NGO from Wrocław, reported difficulties faced by one Roma community living in the city. The Roma community lives in an informal settlement without access to a drinking water. In March 2012, according to the

⁶³ A. Mikulska & H. Patzer (eds.), *Bieg przez płotki. Bariery na drodze do integracji migrantów w Polsce*, Warsaw 2011, pp. 142-143.

⁶⁴ Fagasiński, M. *ENAR Shadow Report 2010; Racism and Related Discriminatory Practices in Poland* <http://cms.horus.be/files/99935/MediaArchive/publications/shadow%20report%202010-11/20.%20Poland.pdf>

⁶⁵ K. Wencel, *Dyskryminacja cudzoziemców w dostępie do usług mieszkaniowych w Polsce. Między teorią a praktyką*, Warsaw 2011, p. 20.

⁶⁶ A. Mikulska & H. Patzer (eds.), *Bieg przez płotki...*, op.cit., p. 52.

community, the Roma were informed that they had one week to leave the settlement. At the time of writing (September 2012) evictions had not been carried out.⁶⁷ The municipality explained that the situation was being monitored and that they were aware of the main problems. The municipality have stated that they took into account dignity, cultural differences and legal requirements when addressing the needs of the local Roma community living in Wrocław.⁶⁸

The living conditions of many of the Roma community are very poor. More than 20% of Roma households do not have access to indoor kitchen, indoor toilet, bath or electricity compared to 10% of non-Roma houses. More than 80% of Roma households are at risk of poverty (compared with 50% of non-Roma households). Although housing is the second priority within the Programme for the Roma community in Poland, only 239 flats and houses were renovated in 2011 compared to 535 in 2010. Only five projects aimed at building houses were carried out and the number of new flats connected to sewage system or electricity dropped by 87% compared to 2010. Around 23% of allocated financial resources were dedicated to housing related issues, which is an 8% drop from last year.⁶⁹

Muslims' access to housing and discrimination in the field depends on ethnic background and nationality. If they are of Polish origin they experience the same treatment as the rest population. Muslim migrants often face discrimination from landlords.

6.3.2 Facilitating factors or protective measures to combat housing challenges

Little has been done to combat discrimination in the field of housing. Landlords have not been targeted by awareness raising campaigns either by the authorities or by NGOs. ALI underlines that 'if discriminatory treatment occurs, the limited possibilities to prove unjustified unequal treatment are problematic while claiming one's rights'. ALI asks 'How should property rights protection be understood in the context of discrimination prohibition?' The answer is not clear, but if a landlord's offer is public, i.e. it is addressed to unlimited number of people, s/he should follow anti-discrimination law and cannot refer to the regulations of privacy law.⁷⁰

A good practice in accessing council housing was identified in Warsaw. Each year the municipality reserves five flats to refugee families who require housing. Some districts in Warsaw began to refuse council housing to refugees, arguing that their needs are already by the special pool offered by the municipality. This practice has been recently changed, and now non-

⁶⁷ Gazeta Wyborcza, *Wrocław bezradny wobec nielegalnych koczowisk Romów*, 01.03.2012, available at: http://wiadomosci.gazeta.pl/wiadomosci/1,114883,11260380,Wroclaw_bezradny_wobec_nielegalnych_koczowisk_Romow.html [accessed 10.09.2012].

⁶⁸ Gazeta Wyborcza, *Czuma: tekst przekracza granice absurdu. Odpowiadamy*, 23.03.2012, available at: http://wroclaw.gazeta.pl/wroclaw/1,35771,11410066,Czuma_tekst_przekracza_granice_absurdu_Odpowiadamy.html [accessed 10.09.2012].

⁶⁹ FRA, *The situation of Roma...*, op.cit., pp. 23-24.

⁷⁰ K. Wencel, *Dyskryminacja cudzoziemców...*, op.cit., p. 26.

citizens are not excluded from the 'normal procedure'. The municipality has continued the practice of reserving five flats for refugees.⁷¹

⁷¹ *Ibid.*, pp. 24-25.

6.4 Racism and related discrimination in health

6.4.1 Manifestations of racism and related discrimination in health

Problems in the Polish healthcare system have not improved in recent years. Difficulty in accessing specialists, long waiting times for surgery, medical tests or other treatment is common. Thorough, systemic reform is required. On the other hand a growing private healthcare system in Poland has become more accessible, but is not free of charge.

According to reports from FRA and a number of NGOs, migrants and refugees face considerable difficulty in accessing proper medical treatment. In particular undocumented migrants are excluded from the public healthcare system and must rely on private healthcare. This is a serious concern for pregnant women and children. For example, treatment during a pregnancy is only provided in emergency cases and it must be provided by emergency medical teams outside a hospital to be free of charge. Consequently, pregnant women who are undocumented migrants may be charged if a healthcare is provided by a hospital.⁷²

There was no data available concerning access to healthcare among the Muslim community.

6.4.2 Facilitating factors or protective measures to combat health inequalities

Access to healthcare in Poland is a challenge, however authorities have not engaged in developing protective measures and programmes to tackle this situation. Public officers interviewed by FRA were not aware of any government approach to improve situation of irregular migrants in this field.⁷³

⁷² FRA, *Migrants in an irregular situation: access to healthcare in 10 European Union Member States*, Vienna 2011, p. 17 and p. 24.

⁷³ *Ibid.*, p.22.

6.5 Racism and related discrimination in access to goods and services

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

There is little information available concerning racism and related discrimination in access to goods and services. Further research is required.

The Appeal Court in Poznań ruled that an incident where a Roma man was requested to leave the 'Cuba Libre' club just after he had been asked about his ethnicity constituted discrimination. A week after the man was turned away, the club's manager stated that there was a 'no Roma policy' so he and his friends could not come in.⁷⁴ The court stressed that security is the only acceptable justification for limiting access to a club or restaurant. Other grounds, including ethnicity, violate the constitutional protection of dignity and equality.⁷⁵

Migrant students, who usually have a visa issued for a year, often face difficulty in accessing contracts for mobile phones and the internet. They are confined to using pre-paid services which are more expensive. They are informed that because they are not staying in Poland permanently and do not have a regular source of income, these services cannot be offered to them.⁷⁶

Access to services in the public sector constitutes a major problem for non-citizens as well as national and ethnic minorities. Research shows that few of the staff in working in the Voivodeship Offices, municipalities and other institutions speak languages other than Polish.⁷⁷ Migrants have reported encountering impatience, unpleasantness and sometimes even hostility from staff. Non-citizens who have to contact with a Voivodeship office highlight that the staff are sometimes impolite to those who don't speak Polish or whose skin colour is different to their own.⁷⁸

According to surveyed non-citizens Polish public institutions are not prepared to provide services to persons of different backgrounds and foreigners who only speak some Polish or do not know the language at all. Various institutions interpret law in different ways or officers working there provide wrong information.⁷⁹ Incompetence, a negative approach and unequal treatment are the main difficulties faced by non-citizens in access to public services.

⁷⁴ See previous report: M. Fagasiński, *ENAR...*, op.cit., p. 27.

⁷⁵ Information available at HFHR's web-page: <http://www.hfhrpol.waw.pl/dyskryminacja/home/strona-20> [accessed 09.09.2012].

⁷⁶ A. Mikulska & H. Patzer (eds.), *Bieg przez płotki...*, op.cit.

⁷⁷ Homo Faber, *Raport z monitoringu funkcjonowania cudzoziemców i cudzoziemek w Lublinie*, available at: <http://hf.org.pl/ao/index.php?id=1685> [accessed 09.09.2012] and Interkulturalni, *Cudzoziemcy w Krakowie. Suplement do raportu*, available at: <http://interkulturalni.pl/-155.html> [accessed 09.09.2012].

⁷⁸ A. Mikulska & H. Patzer (eds.), *Bieg przez płotki...*, op.cit., pp. 52-57 and 92-96.

⁷⁹ K. Iglicka, K. Gmaj, I. Bąbiak, *Cudzoziemcy małżonkowie obywateli polskich - wymiar genderowy. Rekomendacje*, Warsaw 2012, p. 9, available at: <http://csm.org.pl/pl/projekty/projekty-biezace/cudzoziemscy-malzonkowie-obywateli-polskich-wymiar-genderowy.html> [accessed 09.09.2012].

The Muslim community living in Poland faces discrimination in access to goods and services. However there is little data available. There were some instances of where women wearing hijab were ignored by service providers or were asked to leave shops.⁸⁰

6.5.2 Facilitating factors or protective measures to promote equality in accessing goods and services

Due to a lack of data, understanding of discrimination in access to goods and services is very limited.

The Ombudsperson and NGOs such as HFHR were active in promoting and supporting victims of discrimination in access to goods and services. Both the Ombudsperson and HFHR noted one incident where a member of the Roma community was refused entry to a club in Poznań due to his ethnicity. The Ombudsperson sent a letter to the President of the city of Poznań asking the municipality to put measures in place to prevent similar discriminatory practices in the future. The President replied that he did not see the need to undertake any steps to address this problem.⁸¹

There is a lack of knowledge and awareness of discrimination in access to goods and services, and the importance of anti-discrimination laws are not fully recognised. Often civil law and the private property rights are invoked to justify an owner's decision to deny who may access his/her goods or services. The Appeal Court in Poznań in the Cuba Libre club case noted that these rights are not absolute and must be exercised with respect for the rights of others. Providing a service to the public involves respecting certain rules and principles, one of which is the prohibition of discrimination.⁸²

Poland at the time of writing this report has not yet ratified the Convention on the Rights of Persons with Disabilities. Treatment of disabled persons is however a problem. For example in a case of a blind man who could not eat inside a restaurant accompanying by his guide dog the Appeal Court in Warsaw ruled that he was deprived of the right to liberty of movement and freedom to choose a residence and discriminated against by the restaurant's personnel because of his disability.⁸³

⁸⁰ An interview with Muslims living in Poznan, Warsaw, Lublin carried out in August 2012.

⁸¹ The Ombudsperson, *Informacja z działalności Rzecznika Praw Obywatelskich...*, op.cit., p. 18.

⁸² Sąd Apelacyjny w Poznaniu, Wydział Cywilny I Wyrok z dnia 29.02.2012 w sprawie Cubla Libre.

⁸³ Information available at HFHR's web-page: <http://www.hfhrpol.waw.pl/dyskryminacja/home/strona-36> [accessed 09.09.2012].

6.6 Racism and related discrimination in political participation

6.6.1 Manifestations of racism and related discrimination in the realm of political participation

According to the latest MIPEX, Poland provides few opportunities for non-EU citizens to participate in public and political life.⁸⁴ Some groups of non-citizens cannot create an association, receive funding or participate in a public debate through consultative bodies. They cannot vote or join political parties.

Voting rights are restricted to Polish citizens, but EU citizens who reside in Poland permanently have active and passive voting rights in local councils. The Polish Constitution limits the right to join political parties to Polish citizens only. Associations may only be created by Polish citizens or non-citizens who are residing in Poland permanently i.e. they have a settlement permit or a residence permit for a fixed period. The term 'to reside in Poland', however, is unclear and could be subject to different interpretations regarding for example the length or purpose of stay. The foundations, which are regulated under a separate law, can be set up by anyone regardless nationality and residence requirements.

MIPEX shows that access to nationality in Poland is also limited.⁸⁵ It is a presidential prerogative to grant or refuse to grant Polish citizenship to an applicant. A non-citizen who fulfils a number of conditions – who, for example, has a stable source of income and/or has resided in Poland for a required period of time without interruption - may lodge an application for citizenship to the Voivode.

Roma organisations receive only 25% of all resources available within the Programme for the Roma Community in Poland.⁸⁶ In 2011 72 Roma organisations took part in the Programme, compared to a total of 167 local authorities and 40 other institutions (mostly non-Roma NGOs).⁸⁷ Local administration and municipalities are the main beneficiaries of funds offered by the Programme for the Roma Community, however many of them do not consider the difficulties faced by the Roma community to be problems concerning the local community as a whole including the non-Roma community. Moreover local politicians are afraid to engage in Roma projects because they fear they may lose potential votes among the non-Roma population. Hence improving the situation of the Roma is not popular issue at local level. Finally, local authorities are often reluctant to cooperate or cooperate in a limited way with Roma themselves when planning and developing projects dedicated to this community.⁸⁸

⁸⁴ *Migration Integration Policy Index III*, Brussels, 02.2011, p. 155.

⁸⁵ *Ibid.*, p. 156.

⁸⁶ Związek Romów Polskich, *Raport o sytuacji społeczności romskiej w Polsce*, 03.2012.

⁸⁷ MAIC, *Raport z realizacji Programu na rzecz społeczności romskiej...*, op.cit., table No 11.

⁸⁸ Stowarzyszenie Biuro Obsługi Ruchu Inicjatyw Społecznych, *Raport końcowy z badania ewaluacyjnego „Programu na rzecz społeczności romskiej w Polsce” realizowanego w ramach projektu „Q jakości – poprawa jakości funkcjonowania Programu Romskiego”*, Warsaw 2011, pp. 51-52.

Political participation of the Muslim community in Poland is limited. The Muslim League in Warsaw has been struggling to complete its project to build a Mosque and cultural centre in Ochota (district in Warsaw). A number of protests were organised to prevent its construction.

6.6.2 Facilitating factor or protective measures in the realm of political participation

There has been little discussion over social and political participation of minority, migrants and religious communities. Poland has neither ratified nor signed the European Convention on the Participation of Foreigners in Public Life at Local Level. The Polish Migration Strategy, which was eventually accepted by the government in July 2012, does not intend to "promote a multicultural model of migrants' activities. Instead, it seems to favour some form of assimilation. At the same time it gives some indication of the forms of migrants' participation in public life which are to be promoted, e.g. increasing the role of diasporas in foreigners' integration."⁸⁹

The issue of multiculturalism and diversity is rarely discussed by politicians. According to IPA, which interviewed some members of the Parliament, local level politicians and other officials, migrants are treated as visitors and citizenship is considered to be the main basis for political participation. During parliamentary elections the major political parties were silent on the issues relating to immigration in Poland and minorities living in Poland, with the exception of sexual minorities. Migrant organisations are aware that politicians value protective and control measures on access to the Polish labour market more than integration, promotion of diversity or migrant activism.⁹⁰

The majority of migrant organisations have been created only recently and many operate informally. Moreover these organisations tend to be oriented towards a specific ethnic group.⁹¹ IPA prepared a report on Vietnamese and Chinese organisations working in Poland. It revealed that the target for Vietnamese organisations has changed in the recent times; at present the focus is not only those arriving in Poland but also the second generation of Vietnamese who were born in Poland. Chinese organisations concentrate their efforts on activities which promote economic ties and trade with China.⁹²

A positive change was introduced by the new Electoral Code which entered into force in August 2011. The needs of persons with disabilities are now better accommodated, allowing them to vote through post and by proxy or in designated accessible areas.⁹³ Amendments to the Electoral Code also concerned women. Each political party running in parliamentary elections now has to guarantee women at least 35% places in every party list. The number of women in parliament has doubled.⁹⁴

⁸⁹ P. Kazmierkiewicz & J. Frelak, *Political participation of third country nationals on a national and local level*, Warsaw 2011, p. 4.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² Kinga Wysieńska, *Organizacje wietnamskie...*, op.cit., p. 2.

⁹³ FRA, *Annual Report 2012*, Vienna 2012, pp. 186-187.

⁹⁴ Onet.pl, *Ile kobiet w Sejmie? Tendencja jest rosnąca*, 12.10.2011,

6.7 Racism and related discrimination in the media

6.7.1 Manifestations of racism and related discrimination in the media, including the Internet

Media coverage on ethnic and religious minorities, migrants, asylum-seekers and refugees is limited. There is a lack of knowledge among journalists on the issues of discrimination and racism. It has been noted that Polish media coverage is limited to the most extreme and sensationalist stories. Non-citizens receive some coverage in sports news. Otherwise, migrants are generally portrayed as either victims or criminals.⁹⁵

Muslims have underlined that they are portrayed negatively in the media – often as terrorists and radicals. The Polish media do not provide objective media coverage of issues relating to Islam. Most journalists know little about Islam or the traditions and culture associated with it.⁹⁶

Euroislam.pl a web portal "dedicated to present the issues related to the Muslim community integration in Europe" was identified by Muslims as one of the main source of negative, stereotypical and racist information on the community and religion.⁹⁷

The Internet remains one of the main channels for racism, xenophobia and discrimination. Posts written under articles or texts concerning Muslims, sexual minorities, Roma or Black persons are aggressive and often amount to hate speech. In June 2011 Jerzy Kropiwnicki, former President of the city of Łódź, posted a racist comment concerning John Godson on his blog. Godson is of African descent and was recently elected to Parliament. Kropiwnicki wrote that persons who voted for Godson did it only because of the colour of his skin. Kropiwnicki later apologised.⁹⁸ Another politician, a member of the Parliament, Marek Suski called Godson 'a little Negro' (mały Murzynek in Polish) in January 2012.⁹⁹

Identifying perpetrators of racially motivated crime on the internet is often difficult. While the IP address can generally be tracked, the evidence gathered is often insufficient to identify a perpetrator. Investigations are often less than extensive.¹⁰⁰ Often prosecutors close proceedings if a suspect states s/he was not the author of a posted text, had simply copied it and did not have a negative attitude towards a certain minority or group.¹⁰¹ Moreover some prosecutors have difficulty in assessing whether an action was of a public or

<http://wiadomosci.onet.pl/inne/inne1/tylko-w-onecie/ile-kobiet-w-sejmie-tendencja-jest-rosnaca,1,4877411,wiadomosc.html> [accessed 3.12.2012].

⁹⁵ P. Kazmierkiewicz & J. Frelak, *Political participation...*, op.cit., p.21.

⁹⁶ Interviews with Muslims living in major Polish cities.

⁹⁷ Ibid.

⁹⁸ Information available at HFHR's web-page: <http://www.hfhrpol.waw.pl/dyskryminacja/home/strona-29> [accessed 09.09.2012].

⁹⁹ Gazeta Wyborcza, *Suski obraża. "Wasz Murzynek głosuje razem z wami"*, 28.01.2012, available at: http://wyborcza.pl/1,75478,11037579,Suski_obraza_Wasz_Murzynek_glosuje_razem_z_wami_.html [accessed 09.09.2012].

¹⁰⁰ K. Karsznicki, *Przestępstwa popełniane z pobudek rasistowskich lub ksenofobicznych*, [in:] Prokuratura i Prawo No 2, Warsaw 2012, p. 35.

¹⁰¹ Ibid., p. 40.

private nature. For example posting a Nazi flag with a swastika on a social networking service was not considered a crime of a public nature, because a login was required to access the portal.¹⁰²

In May 2011 in a radio morning broadcast (Radio Eska Rock, Poranny WF) two journalists made a racial comment concerning Alvin Gajadhur who is a spokesperson for the Road Safety Inspection. The journalists discussing him used expressions such as 'black pawns', 'black panthers', 'Ku-Klux-Klan', 'bushman' and 'fat lips'. They made fun of his skin colour and were giving 'advice' 'how to recognise a Black person on a street' referring to different body parts including his penis. The National Broadcasting Council fined the radio.¹⁰³ Gajadhur informed the prosecutor's office in Warsaw. However, the prosecutor initially considered that no crime had been committed. Eventually the case was referred to the court and is still pending at the time of writing.¹⁰⁴ Both journalists continued to work for the radio until June 2012 when, in the same radio show, they made derogatory comments about Ukrainian women living and working in Poland. Eventually both were dismissed.

6.7.2 Facilitating factor or protective measures in the media

There little awareness among journalists about the issues of racism and related discrimination. Muslims living in Poland underline that they are not prepared to talk or write about Islam in an objective way and they usually try to find the most controversial cases to present and describe the whole community through them.¹⁰⁵

There are no legal provisions which are aimed specifically at countering discrimination in the media. However, article 24 of the Civil Code¹⁰⁶ provides that a person who has encountered discrimination may invoke and claim for damages for loss or harm suffered.

In September 2011 for the first time a civil suit was lodged against a company which broadcasted a sexist commercial on free telecommunication service using a picture of a woman in a pink corset and unbuttoned jeans and a sign "starting from September we are giving for free..." (od września dajemy za darmo...).¹⁰⁷ The experts from NGOs underline that in the past years various women images and sexual contexts have been used to promote different products. The case is still pending at the time of writing this report.

¹⁰² *Ibid.*, p. 41

¹⁰³ Przewodniczący Krajowej Rady Radiofonii i Telewizji, *Decyzja Nr 15/2011 z dnia 13 października 2011 roku*, available at: http://www.krrit.gov.pl/Data/Files/_public/Portals/0/komunikaty/kp2011/listy_zalaczniki/decyzja_kara_eskarock-poranny-wf.pdf [accessed 09.09.2012].

¹⁰⁴ Wp.pl, *Dziennikarze Jakub W. i Michał F. usłyszeli zarzuty znieważenia publicznego Alwina Gajadhura*, 04.06.2012, available at: <http://wiadomosci.wp.pl/kat.1348,title,Dziennikarze-Jakub-W-i-Michal-F-uslyszeli-zarzuty-zniewazenia-publicznego-Alwina-Gajadhura,wid.14544049,wiadomosc.html?ticaid=1f23b&ticsn=3> [accessed 09.09.2012].

¹⁰⁵ Interview with a group of Muslims living in the biggest cities in Poland.

¹⁰⁶ Kodeks Cywilny, Journal of Laws 1964, No 16, item 93 with later amendments.

¹⁰⁷ Polskie Radio, "Od września dajemy za darmo" w sądzie, 03.09.2011, available at: <http://www.polskieradio.pl/5/3/Artykul/449306,Od-wrzesnia-dajemy-za-darmo-w-sadzie> [accessed 09.09.2012].

6.8 Racism and related discrimination in criminal justice

6.8.1 Policing and ethnic profiling¹⁰⁸

While research on the issue has not been conducted in recent years, it appears that some groups may be targeted by the police more than others when issues of counter terrorism and public security are concerned. The Muslim community is particularly vulnerable to these practices. Muslim students living in Poland are approached by the Internal Security Agency (Agencja Bezpieczeństwa Wewnętrznego - ABW) and asked to cooperate and report on their colleagues, fellow Muslims attending the Mosque and Imams' activities. Muslims who possess Polish citizenships have also been approached and asked to report. The ABW offers to facilitate the regularisation process for migrants in exchange for cooperation and reporting.¹⁰⁹

6.8.2 Racist violence and crime

The Ombudsperson, the Government Plenipotentiary for Equal Treatment and NGOs report a growing number of racist attacks. According to statistics provided by the General Prosecutor's Office there were 272 new cases¹¹⁰ investigated by the prosecutor's office in 2011 compared to 146 cases in 2010. However, only 40 cases were referred to the courts. 134 were discontinued due to failure to identify perpetrators.¹¹¹ In total, nine persons were convicted of offences under article 119(1)¹¹² and four were convicted of offences under article 195¹¹³ of the Penal Code. In most cases a minor fine (up to 300 zlotys, approx. €75) and/or unsupervised probation was imposed by the courts.¹¹⁴ Finally, according to the police statistics there were eight and nine suspects under articles 119(1) and 195 respectively. 23 and 11 offences were confirmed, but police only asked prosecutors to charge the perpetrators in a total of seven cases. 10 cases were discontinued due to failure to identify offenders.¹¹⁵

In September 2011, in the city of Bialystok there was an attempt to set a front doors on fire to a flat owned by a Polish-Pakistani couple. The flat was on a third floor and the only way out was through that doors. The couple had been

¹⁰⁸ 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" .

¹⁰⁹ Interviews with Muslims living in the major Polish cities.

¹¹⁰ Note that in total there were 323 cases investigated by the prosecutor's offices, 40 cases were registered in 2010 but did not concluded by the end of that year.

¹¹¹ Statistics provided by the Prosecutor General Office.

¹¹² Article 119. § 1. Whoever uses violence or makes unlawful threat 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, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

¹¹³ Article 195. § 1. Whoever maliciously interferes with a the public performance of a religious ceremony of a church or another religious association with regulated legal status shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. § 2. The same punishment shall be imposed on anyone who maliciously interferes with a funeral, mourning ceremonies or rites.

¹¹⁴ Statistics provided by the Ministry of Justice.

¹¹⁵ Statistics provided by the Police Headquarters in Warsaw.

the target of racist comments and threats before the incident. No prosecutions have been brought to date.¹¹⁶

While racist violence and crime are a problem in Poland, there is still a lack of knowledge among prosecutors, police officers and judges about racially motivated offences. Often physical attacks on members of ethnic minority groups are not recorded as racist attacks but rather as an assault. The Prosecutor General's research on cases concerning racist violence and crime shows that it is often difficult to determine a perpetrator's motive in committing a crime.¹¹⁷

Roma, Black persons and migrants from the Middle East, i.e. those with a different colour of skin from the majority population are the most vulnerable to racist attacks. An analysis of the cases of violent attacks motivated by hatred committed in the first half of 2011 confirms that hypothesis. In total 7 such cases were registered by the General Prosecutor Office and in all cases the victims were Roma, Arabs or people of African descent.¹¹⁸

Poland does not have a free legal and psychological assistance system to victims of racism and discrimination, thus it has fallen to NGOs to provide this kind of assistance.

6.8.3 Hate speech

Hate speech is a growing problem in Poland. Under article 256 of the Penal Code public promotion of fascism or other totalitarian regimes or stirring up hatred directed against any nationality, ethnicity, race, religion or beliefs is subjected to a fine or deprivation of liberty for up to two years. Article 257 concerns public insults towards a group or an individual because of his/her nationality, ethnicity, race, belief or a lack of thereof. This crime is punishable by a deprivation of liberty for up to three years.¹¹⁹ According to available statistics in 2011 there were a total of 18 convictions under article 256 and 25 under article 257. The majority of offenders sentenced received only a fine without probation.¹²⁰ In the same period of time police recorded respectively 81 and 35 crimes. In the majority of these cases prosecutions did not follow because the perpetrators could not be identified.¹²¹ The prosecutor's offices investigated 159 cases under article 256 and 150 cases under article 257. In total, 74 investigations concerned crimes committed on the Internet and 10 related to printed publications.¹²²

One of the main problems identified concerning investigations carried out by police and prosecutors is proper understanding of the provisions laid down in article 257 of the Penal Code. This is due to lack of competence in identifying

¹¹⁶ Gazeta Wyborcza, *Za zdradę białej rasy? Rasistowski atak w Białymstoku*, 24.08.2011, available at: http://bialystok.gazeta.pl/bialystok/1,85994,10162840,Za_zdrade_bialej_rasy_Rasistowski_atak_w_Bialymstoku.html [accessed 10.09.2012].

¹¹⁷ K. Karsznicki, *Przestępstwa popełniane...*, op.cit., p. 33.

¹¹⁸ *Ibid.*, p. 30.

¹¹⁹ Kodeks Karny, Journal of Laws of 1997, No. 88, item 553, with later amendments

¹²⁰ Statistics provided by the Ministry of Justice.

¹²¹ Statistics provided by the Police Headquarters in Warsaw.

¹²² Statistics provided by the Prosecutor General Office.

crimes motivated by racism and hate. According to some experts to improve this situation a change in implementation of law at the court level is inevitable.¹²³

There were a number of racist and xenophobic incidents in football stadiums. In 2011 22 such cases were prosecuted.¹²⁴ Fans of football clubs from Warsaw, Cracow, Wrocław, Poznań, Gdańsk and other cities around Poland called Black players 'niggers', 'monkeys', 'gorillas' and 'asphalt' and threw bananas at them, they also used anti-Semitic slogans and posters displaying racist symbols. In 2011 and 2012 fans of football team Śląsk Wrocław, which has just won the Polish cup, on several occasions used racist and xenophobic slogans and offended Black players. The media have reported that the club had 'a problem with racism'.¹²⁵

In September 2011 fans of club Legia Warszawa unfurled a banner with the slogan "Legia Jihad" during a match between Legia and a club from Israel (Hapoel Tel Aviv). The sign was written in a font similar to Arabic letters. The case was sent to the Prosecutor's Office but was dropped because the act did not constitute a criminal offence. A UEFA representative was monitoring the match.¹²⁶ Later, in November 2011, UEFA imposed fine of 10,000 Euros on the Polish club.¹²⁷

Anti-Semitic incidents are still common. According to the Monitoring Team on Racism and Xenophobia in the Ministry of Interior there were 25 incidents related to anti-Semitism in 2011, compared to 30 the year before.¹²⁸ Jewish cemeteries and synagogues were vandalised and swastikas were drawn on gravestones. Anti-Semitic slogans and posters were also displayed by football fans during matches. The Ombudsperson was concerned over a difference between finalised prosecutors' investigations and reported incidents,¹²⁹ because only a very limited number of cases are taken up by the Prosecutor's office for further investigation and then referred to the courts.

In Lublin a Black woman was insulted by a driver just after she had told him he should have stopped and let her pass in the street. Man made reference to the colour of her skin. Later, in February 2012 the man apologised and paid compensation.¹³⁰ Also in Lublin in September 2011 posters protesting against foreign students were displayed in the street with the slogan "Stop sub-humans in the Polish universities!" ("Stop podludziom na polskich studiach!")

¹²³ The Ombudsperson, *Przeciwdziałanie Przemocy motywowanej rasą...*, op.cit., pp. 44-48.

¹²⁴ Statistics provided by the Prosecutor General Office.

¹²⁵ *Gazeta Wyborcza*, *Śląsk się zmienia. Mniej rasizmu na meczach*, 09.05.2012, available at: http://wroclaw.gazeta.pl/wroclaw/1,35771,11691618,Slask_sie_zmienia_Mniej_rasizmu_na_meczach_FELIETON.html [accessed 09.09.2012].

¹²⁶ Polskie Radio, *Sprawa "Dżihad Legia" trafia do prokuratury*, 30.09.2011, available at: <http://www.polskieradio.pl/5/3/Artykul/449036,Sprawa-Dzihad-Legia-trafia-do-prokuratury> [accessed 10.09.2012].

¹²⁷ *Dziennik.pl*, *UEFA ukarała polski klub za transparent "Jihad Legia"*, 18.11.2011 available at: <http://sport.dziennik.pl/liga-europy/artykuly/367259,10-tysiecy-euro-kary-za-transparent-jihad-legia.html> [accessed 10.09.2012].

¹²⁸ FRA, *Antisemitism – Summary overview of the situation in the European Union 2001-2011*, Vienna 2012, p. 44.

¹²⁹ A letter from the Ombudsperson to the Prosecutor General, number RPO-674249-II/11/UWa, dated 19.05.2011.

¹³⁰ Information available at HFHR's web-page: <http://www.hfhrpol.waw.pl/dyskryminacja/home/strona-20> [accessed 9.09.2012].

under a caricature of Black, Muslim and Asian persons.¹³¹ In March 2012 a man was arrested for possessing a number of stickers with hateful and racist texts directed against Muslims.¹³²

Poland signed but has not ratified the Council of Europe Convention on Cybercrime¹³³ neither its additional protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

The EU Framework decision on racism and xenophobia¹³⁴ was eventually transposed into Polish law in July 2011.¹³⁵ The government argued that transposition of provisions on liability of legal persons committing offences concerning racism and xenophobia had to be introduced.¹³⁶

6.8.4 Counter terrorism

Polish law defines terrorism a threat to commit or an act committed inter alia to intimidate many persons or cause a serious disturbance to the state, or other states or international organisations or the constitutional system or the economy of the Republic of Poland, the other State or an international organisation.¹³⁷

In December 2012, a court in Warsaw dismissed a civil case by a Sikh, 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. The court considered that the Border Guard had violated the claimant's personal rights but this violation was justified. The Border Guard officers who asked him to take his turban off were acting in accordance with law and the only way to check a turban was to do it manually. On the contrary, man's lawyer said that on several occasions his client had not been asked to take his turban off, thus there was a way to guarantee safety to other passengers without checking a turban manually.¹³⁸ An appeal was lodged and the case is still pending at the time of writing this report.

¹³¹ Gazeta Wyborcza, "Stop podludziom na polskich studiach". *Świństwo!*, 19.09.2011, available at: http://lublin.gazeta.pl/lublin/1.48724.10316336.Stop_podludziom_na_polskich_studiach_Swinstwo.html [accessed 10.09.2012].

¹³² Polskie Radio, *Rasistowskie naklejki ukryte w terrarium z tarantulą*, 07.03.2012, available at: <http://www.polskieradio.pl/5/3/Artykul/556739.Rasistowskie-naklejki-ukryte-w-terrarium-z-tarantula> [accessed 09.09.2012].

¹³³ Council of Europe Convention on Cybercrime and its Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

¹³⁴ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, L 328/55, 06.12.2008.

¹³⁵ Ustawa z dnia 29 lipca 2011 r. o zmianie ustawy — Kodeks karny, ustawy — Kodeks postępowania karnego oraz ustawy o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary, Journal of Laws of 2011, No 191 item. 1135.

¹³⁶ Projekt Ustawy o zmianie ustawy - Kodeks Karny i niektórych innych ustaw, druk sejmowy 4342. Explanatory note to the project of amendments is available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20111911135> [accessed 09.09.2012].

¹³⁷ Article 115a par. 2 of the Penal Code.

¹³⁸ Information available at HFHR's web-page: <http://www.hfhrpol.waw.pl/dyskryminacja/home/strona-22> [accessed 09.09.2012].

6.8.5 Facilitating factor or protective measures in criminal justice

In October 2011, in a letter to the Prosecutor General, the Ombudsperson expressed concerns about the growing number of racially-motivated and xenophobic attacks and called on the Prosecutor to take the necessary measures to address these crimes.¹³⁹ The Government Plenipotentiary for Equal Treatment in March 2012 also called on the Prosecutor General to take necessary actions to investigate and prosecute the growing number of crimes motivated by racism and xenophobia. She argued that investigations are dropped just because the social harm caused by such offences is considered to be low. According to her, this situation has a negative influence on the situation of national, ethnic and religious minorities in Poland.¹⁴⁰

There was an attempt to amend the Penal Code to punish hate speech against sexual minorities. HFHR requested that the Minister of Justice introduce a proper protection for victims of hatred directed against this group, primarily because it is a means of guaranteeing that *ex officio* proceedings will be carried out by police or prosecutors. According to the organisation such an amendment is required to counter the growing social problem of hate speech against sexual minorities.¹⁴¹ Eventually a project amending the Penal Code was introduced in the Parliament and legislative procedure is still pending at the time of writing this report.

The Civil Law Codification Commission proposed to increase protection against unequal treatment by adding provisions on non-discrimination on the grounds of age, gender, ethnicity, nationality and other grounds to the Civil Code.¹⁴²

The Minister of Sport and Tourism listed several counter discrimination and xenophobia educational and awareness raising projects. The Sports Development Strategy until 2015 aims at tackling the problem of xenophobia and racism in sports. Starting from 2009 the Ministry has organised conferences on the issue and launched an education project with municipalities in Łódź to promote fair play among young sportsmen and sportswomen and has organised a training programme to teach coaches to counter aggression in sports. The Ministry of Sport and Tourism before EURO 2012 started several other projects, training sessions and campaigns on counter racism and discrimination dedicated to football fans.¹⁴³

¹³⁹ Amnesty International, *Poland. Involvement in US-led rendition and secret detention programmes and women's access to sexual and reproductive rights* Amnesty International. Submission to the UN Universal Periodic Review, May-June 2012, available at: <https://doc.es.amnesty.org/cgi-bin/ai/BRSCGI/EUR3700211?CMD=VEROBJ&MLKOB=30231614747> [accessed 10.09.2012].

¹⁴⁰ The Government Plenipotentiary for Equal Treatment, *Wystąpienie do Prokuratora Generalnego o podjęcie działań na rzecz skutecznego wykrywania oraz karania przestępstw na tle narodowościowym lub etnicznym*, March 2012, available at: <http://rownetraktowanie.gov.pl/aktualnosci/wystapienie-do-prokuratora-generalnego-o-podjecie-dzialan-na-rzecz-skutecznego> [accessed 10.09.2012].

¹⁴¹ Information available at HFHR's web-page: <http://www.hfhrpol.waw.pl/dyskryminacja/home/strona-47> [accessed 09.09.2012].

¹⁴² Lex.pl, *Równe traktowanie będzie zapisane w kodeksie cywilnym*, 15.12.2011, available at: <http://www.lex.pl/czytaj/-/artykul/rowne-traktowanie-bedzie-zapisane-w-kodeksie-cywilnym> [accessed 09.09.2012].

¹⁴³ A letter from the Minister of Sport and Tourism to the Ombudsperson, number BG-1-073-20198/11/MJ, dated 24.10.2011.

In 2011 the Ombudsperson received 64 complaints on discrimination on the ground of race and nationality and during that time a total of 74 cases in were followed up. The ombudsman took action in 57 of them the Ombudsperson.¹⁴⁴ The Ombudsperson, on the basis of a study on racist and xenophobic incidents, recommended the creation of one, common database for public authorities, law enforcement and NGOs to collect information on these crimes. Moreover she stressed the importance of raising awareness about discrimination and racism related crimes, which make potential victims aware of their rights. Finally prosecutors and judges should be better trained to recognise acts of xenophobia, racism and discrimination.¹⁴⁵

¹⁴⁴ The Ombudsperson, *Przeciwdziałanie Przemocy motywowanej rasą...*, op.cit., p. 69.

¹⁴⁵ The Ombudsperson, *Informacja z działalności Rzecznika Praw Obywatelskich...*, op.cit., p. 48.

7. Civil society assessment and critique in ensuring protection of fundamental rights

During the period covering by this report the Polish government and civil society were preparing for the second cycle of Universal Periodic Review carried out by the Human Rights Council. A session dedicated to Poland was scheduled for May 2012, however NGOs and International Governmental Organisations (IGOs) were permitted to submit their assessment on human rights in Poland until November 2011.

Amnesty International, Helsinki Foundation for Human Rights, Polish Society of Anti-Discrimination Law (PSAL), Campaign Against Homophobia (KPH) and other NGOs raised the issues of equal treatment, racism and discrimination. The insufficient funding provided to the Ombudsperson to carry out anti-discrimination related work was identified as a pressing issue. The organisations criticised existing legal provisions, such as the limited grounds in the prohibition of discrimination and the lack of provisions related to hate speech. PSAL and KPH argued that the Penal Code did not cover hatred based on sexual orientation or gender identity, thus victims of such crimes have to rely on a general provisions of the Penal Code which results in lower penalties and difficult legal procedures.¹⁴⁶ NGOs expressed concern over rising levels of racism, xenophobia and intolerance in Poland.¹⁴⁷

Poland has not created a dedicated equality body to tackle racism and related discrimination as well as other forms of inequality. At present, responsibility for these issues is divided between a number of institutions. In practice this hinders the creation of a comprehensive counter discrimination agenda.¹⁴⁸

Civil society has been critical over women's rights. Human Rights Watch for example assesses Polish abortion law as one of the most restrictive in Europe,¹⁴⁹ Amnesty International adds that women are denied access to reproductive health services.¹⁵⁰ Karat Coalition lists seven main problems in the field of women's rights: "(1) Lack of legal protection from discrimination for women in all areas of life; (2) Lack of relevant national machinery for the advancement of women; (3) Lack of National Programme of Action for Women; (4) Lack of effective mechanism for advancing meaningful participation of women in political life; (5) Violations of reproductive and sexual rights, including: criminalization of abortion on social and economic grounds, restrictive anti-abortion law that is stricter *de facto* than *de jure*, limited access to family-planning, lack of comprehensive and evidence-based sexuality education at schools; (6) Violations of rights of lesbian and bisexual

¹⁴⁶ *Alternative Report made by Polish Society of Anti-Discrimination Law and Campaign Against Homophobia submitted to the Human Rights Council for the Universal Periodic Review (13th session)*, p. 3, document available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPLStakeholdersInfoS13.aspx> [accessed 09.09.2012].

¹⁴⁷ Amnesty International, *Poland. Involvement in US-led rendition...*, op.cit.

¹⁴⁸ A. Gliszczyńska-Grabias & L. Kondratiewa-Bryzik, *Walka z dyskryminacją rasową w państwach UE - szklanka pełna tylko do połowy*, available at: http://www.europapraw.org/files/2012/09/Policy_paper_Walka_z_dyskryminacja_rasowa.pdf [accessed 09.09.2012].

¹⁴⁹ HRW, *World Report 2012*. Poland, available at: <http://www.hrw.org/world-report-2012/world-report-2012-european-union#poland> [accessed 09.09.2012].

¹⁵⁰ Amnesty International, *Poland. Involvement in US-led rendition...*, op.cit.

women, including: lack of recognition of hate speech against women and homosexuals in the Penal Code, lack of regulations on same-sex relationships, lack of inclusion of intersectional discrimination in Polish legislation; (7) Economic position of women: Pay gap amounting over 30% for women and men with basic vocational education and growing phenomenon of «working poor» among these women."¹⁵¹

At the time of writing this report Poland has not signed the Council of Europe Convention on preventing and combating violence against women and domestic violence.¹⁵² According to official statistics in 2011 more than 70,000 women were victims of domestic violence.¹⁵³

In 2011 and the beginning of 2012 NGOs were advocating for ratification of the Convention on the Rights of Persons with Disabilities. Poland had sign it in 2007 but until July 2012 struggled with its ratification.¹⁵⁴ Several NGOs has criticised this process and government's approach towards Convention, highlighting that "if the government does not have to do something, it does nothing" in field of anti-discrimination policy. Convention will have a positive impact on state's activities in the field of the rights of persons with disabilities, foremost it will change now paternalistic and passive to more proactive and innovative approach, in particular concerning incapacitate persons.¹⁵⁵

Finally NGOs expressed concerns over Poland's role in the US-led rendition and secret detention programmes. HFHR states that Poland has not explain fully this issue and did not hold anybody responsible for the alleged crimes committed. "The investigation by the Appeal Prosecutor's Office in Warsaw is still pending. Al-Nashiri and Abu Zubaydah, Guantanamo prisoners claiming to be former detainees of secret CIA facilities in Poland, were granted status of a victim in the pending investigation. Recently, in November 2011, the Prosecutor W. Tyl declared that it would end in 2012. However, the HFHR doubts whether this will take place, since the investigation has already been prolonged several times. Investigation, both by Prosecutor's service and the Parliament is subject of concern of international bodies."¹⁵⁶

¹⁵¹ *Polish Government's Performance In Terms of Women's Human Rights. Information submitted for Universal Periodic Review of the Republic of Poland by the following civil society organizations: KARAT Coalition (NGO in Consultative Status with the Economic and Social Council of the United Nations) and Campaign Against Homophobia*, document available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPLStakeholdersInfoS13.aspx> [accessed 09.09.2012].

¹⁵² Council of Europe Convention on preventing and combating violence against women and domestic violence.

¹⁵³ Statistics provided by the Police Headquarters in Warsaw.

¹⁵⁴ Prezydent podpisał ustawę o ratyfikacji Konwencji o prawach osób niepełnosprawnych, 26.07.2012,

<http://rownetraktowanie.gov.pl/aktualnosci/prezydent-podpisal-ustawe-o-ratyfikacji-konwencji-o-prawach-osob-niepelnosprawnych> [accessed 09.09.2012].

¹⁵⁵ Polska ratyfikuje konwencję o prawach osób niepełnosprawnych, 02.08.2012, available at:

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¹⁵⁶ *Universal Periodic Review of Poland. Submission by the Helsinki Foundation for Human Rights (Warsaw) 28 November 2011*, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRPLStakeholdersInfoS13.aspx> [accessed 09.09.2012].

8. Good practices

Example of NGO Good Practice in Employment

The Polish Diversity Charter

In February 2012 the Polish Diversity Charter was officially signed by several companies. "The Diversity Charter is a written obligation signed by a company which declares to introduce the prohibition on discrimination in the workplace and decides to undertake measures to create and promote diversity."

More information: <http://www.kartaroznorodnosci.pl/pl/en> [accessed 10.09.2012]

Training for trade unions

From 2010 to 2012 Polish Society of Anti-Discrimination Law (PSAL) provided trade union members with a training programme on anti-discrimination law, gender mainstreaming and equal participation in employment. More information on the project is available at:

<http://www.ptpa.org.pl/projekty/prawo-antydyskryminacyjne-w-codziennej-dzialalnosci> [accessed 09.09.2012].

Example of NGO Good Practice in Education

Research on Roma children discrimination in education

A report prepared and published by the Roma Association in Poland at the end of 2011 provided the first in-depth assessment of the practice of placing Roma children in special classes and schools. The report proposed an alternative method of determining a child's ability to attend mainstream education.

Information on the project and report are available at:

<http://www.stowarzyszenie.romowie.net/> [accessed 10.09.2012].

Example of NGO Good Practice in Employment and Housing

NGO support to the Individual Integration Programme (IPI) for refugees

The Integration programme offered to refugees and persons granted subsidiary protection does not work. Often, after a year IPI, the beneficiary is not able to function independently in society. Caritas Poland carries out a project concerning IPI offered to refugees and persons granted subsidiary protection living in Lublin. In cooperation with local authorities Caritas provides legal, psychological and social assistance to this group and thus strengthens the process of integration by creating tailored programmes reflecting the needs of each individual.

More about the project is available at: <http://migranci.caritas.pl/uchodzcy-w-polsce/biuletyn> [accessed 10.09.2012].

Example of NGO Good Practice in Access to Goods and Services

Migrant mystery client in a public institution

Stowarzyszenie Interkulturalni in 2010 prepared a report on the situation faced by migrants in Cracow focusing on the obstacles in assessing public services. In 2011 a follow up report was published. Mystery clients were sent to the Voivodeship office and other public institutions to assess improvements and changes which have been introduced. During the visits to these institutions a tester took several elements into account: language competences, accuracy of information provided and openness toward non-citizens.

More about the project at: www.interkulturalni.pl [accessed 10.09.2012].

Example of NGO Good Practice in Promoting Political Participation

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 provides an NGO perspective on any drafts of legislation related to racism, discrimination and equal treatment and monitors the eventual adoption of such legislation.

More on the coalition is available at:

<http://www.ptpa.org.pl/projekty/koalicja-na-rzecz-rownych-szans>

[accessed 10.09.2012].

Example of Good Practice in the Media

Roma newspaper

Roma Association in Poland in 2011 published first number of 'Dialog Pheniben' a newspaper dedicated to Roma tradition, history and culture. The newspaper is published every three months and is available online at:

<http://www.dialog-pheniben.pl/> [accessed 10.09.2012].

Radio audition on Roma

At the beginning of 2011 a radio channel 'Radio dla Ciebie' launched a special broadcast dedicated to the Roma community living in Poland. Every Monday, Wednesday and Friday there is a report or discussion tackling social and political issues or promoting the tradition and culture of Roma minority.

Broadcasts are available on-line at:

http://www.rdc.pl/index.php?/pol/artykuly_1/warto_wiedziec/projekty_na_rzecz_z_spolecznosci_romskiej_1 [accessed 10.09.2012].

9. National recommendations

General

- Poland should ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Poland should create a common database for racist and discrimination related incidents.
- Poland should properly implement the Race Directive.
- Poland should create an Equality Body which will tackle all discrimination and racism related matters.
- The Polish government should create a system of free legal assistance to victims of racism and discrimination.

Special Focus: Muslim Communities

- Comprehensive research on racism and discrimination against Muslim community living in Poland should be carried out by NGOs and state institutions.
- Polish authorities should develop education programmes – both in school and in the broader community - on Muslim community, culture and tradition.
- Police officers should be provided with training to tackle the issue of ethnic profiling.
- The secret service should publish more detailed data on its investigations concerning Muslims and guarantee greater transparency regarding its policy towards the Muslim community.

Employment

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

Education

- Further research has to be carried out to determine the reasons behind decisions to place Roma children in special schools and classes.
- School curricula should better tackle multiculturalism, provide more information on ethnic and religious minorities in Poland and abroad. Schools should teach pupils about the issues of discrimination and racism.

Housing

- The authorities should develop a special social programme aimed at assisting homeless refugees and migrants.
- Municipal authorities should not discriminate against non-citizens in access to council housing and follow existing jurisprudence in this regard.
- The situation tests should be carried out to determine potential racial and discriminatory attitude of landlords.

Health

- In urgent cases, free health care should be provided to all migrants, including undocumented migrants, and in particular to children and pregnant women.

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.
- Judges, prosecutors and police officers should be trained to deal with discrimination and racism in the field of access to goods and services.

Criminal justice

- An independent survey on ethnic profiling by the police and law enforcement agencies should be prepared by NGOs and/or the Equality Body.
- Racist crimes should be taken more seriously by police officers and prosecutors. Training on hate speech and racist crimes should be provided to police officers, prosecutors and judges.
- 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.
- The sports club should not prevent either women or men from practicing any sports.
- Hatred on the ground of sexual identity and sexual orientation should be criminalised and added to the Penal Code.

Media

- NGOs, municipal and state authorities should provide journalists with training on racism and discrimination.
- The public media should increase the diversity of broadcasting and include programmes which celebrate the tradition and culture of religious minorities living in Poland.

10. Conclusion

This report shows the need to conduct detailed study on discrimination against the Muslim community living in Poland. At present, there is very little research or data available on these issues. While the Muslim community in Poland is relatively small, it appears that negative attitudes towards Muslims, particularly towards women who wear the hijab, are common across the general population in Poland. NGOs and state authorities should launch campaigns to raise awareness and increase understanding of Muslim culture and traditions.

Hate speech, particularly on the Internet is a growing problem in Poland. There is still a lack of understanding among police officers, prosecutors and judges about what hate speech entails. These institutions often dismiss and belittle hate speech in online posts and elsewhere. These incidents are rarely fully recognised as crime. The list of the grounds for hate speech is limited, and ought to be expanded to include provisions which will punish offensive comments on sexual orientation, sexual identity and disability.

It appears that the Polish authorities do not consider discrimination and racism to be important issues and action to tackle these problems has been limited. Inaction and passivity on the part of the government have negative consequences in society at large and help create an environment which fosters hatred, racism and discrimination.

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Annex 1: List of abbreviations and terminology

AI - Amnesty International
ALI – Association for Legal Intervention
CBOS - Centrum Badania Opinii Publicznej (Public Opinion Research Centre)
FRA – Fundamental Rights Agency
GUS - Główny Urząd Statystyczny (Central Statistical Office)
HFHR – Helsinki Foundation for Human Rights
HRW - Human Rights Watch
HNLAC – Halina Nieć Legal Aid Centre
IPA – Institute of Public Administration
IPI - Individual Integration Programme
KPH - Campaign Against Homophobia
MAIC - Ministry of Administration and Digitalisation
Moi – Ministry of Interior
NGO – Non-governmental Organisation
PIP - National Labour Inspectorate (Państwowa Inspekcja Pracy - PIP)
PSAL – Polish Society on Anti-discrimination Law



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