



european network against racism

# ENAR Shadow Report 2009-2010

## ENAR SHADOW REPORT 2009/2010

### Racism and Discriminatory Practices in Poland

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

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

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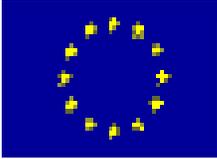
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## I. Executive summary

Definitely, Poland has not dealt with the phenomenon of racism, intolerance and discrimination, which still is a significant problem in society. No new legislation on racism or discrimination was adopted in either 2009 or the first half of 2010 and the number of racist crimes increased.

Migrants, including asylum seekers and refugees, remain vulnerable to racism and discrimination. The Roma, among ethnic and national minorities, are the most discriminated group. Xenophobia and intolerance, compared to previous years, afflict not only Jews, but also the Muslim community. Furthermore, persons of black or darker colour of a skin are often vulnerable to verbal and physical abuses.

In the field of employment, migrants and Roma face discrimination and are abused and ill-treated by employers. Often, employers do not follow the Labour Code or their obligations as outlined in their Contract.

Migrants, refugees and Roma face difficulties in access to housing. Those who have little or no income cannot rent a flat and the council housing system in Poland does not meet existing needs.

The right to free education for children under the age of 18, guaranteed by the Constitution, is not respected by the State. A lack of proper school programmes addressing the needs of foreigner pupils leads to the ghettoisation of Roma and Chechen children in particular. In general, Polish schools are not prepared to teach in a multicultural environment.

The racist crime rate in 2009 increased in comparison to previous years. In particular, black people are vulnerable to verbal and physical attacks. Anti-Semitic slogans and posters still remain a problem. Desecration of property of religious and ethnic minorities is common.

The media coverage on ethnic minorities and migrants is more positive than it was before. However, the Polish authorities have not managed to deal with anti-Semitism and xenophobia in some mass media outlets. The Internet remains the main platform for racist and anti-Semitic films, jokes and comments, as most internet users feel there is anonymity and thus impunity.

Over the course of 2009 and 2010 the Government has not taken any steps to finalise the works on the project of the Act on anti-discrimination, which aimed at fully implementing the Race Directive<sup>1</sup>. At present, the directive is implemented only in the field of labour.

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<sup>1</sup> 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.

The Government Plenipotentiary for Equal Treatment, created in 2008, does not meet the requirements laid down in Article 13 of the Race Directive. Ms. Radziszewska, the current Plenipotentiary, has been severely criticised by NGOs, mainly for her lack of knowledge on discrimination and her controversial comments and statements. Moreover, Poland does not provide independent assistance to victims of discrimination.

In the field of migration and integration, there is a lack of support or assistance on matters relating to the integration of migrants. In addition, the Individual Integration Programme provided to refugees needs improvement.

Despite the fact, there were some important developments in the jurisprudence related to racism, inconsistency in the interpretation of the law remains a problem.

Finally, there is no State policy on the social inclusion of migrants. The comprehensive strategy related to poverty eradication and social exclusion has not been developed. Moreover, during 2009 and the first trimester of 2010 several problems related to undocumented migrants emerged.

The findings of this report shows that there is some positive progress in the field of anti-discrimination and anti-racism, however, the failure of the State to tackle the intolerance and the lack of a coherent policy led to negative developments, such as the increase of racist crimes, the growing fear of Muslims and Arabs as well as discrimination against migrants and national and ethnic minorities in various areas.

The main recommendations related to the situation of racism and discrimination in Poland are as follows:

- Poland should immediately and fully transpose the Race Directive and create an independent body to tackle the problem of discrimination and racism.
- Poland should create a system of free legal assistance to victims of racism and discrimination.
- An independent survey on ethnic profiling by the police and law enforcement agencies should be prepared.
- The border guards and police officers should be trained on religious and cultural differences.
- The State should deal with the racism in sport more effectively.
- The education system in Poland should meet the needs of pupils from different cultures and those of different religions.

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### III. Introduction

The report covers the period from January 2009 to March 2010 and aims to present the policy of the State and the situation of several groups vulnerable to racism and discrimination in Poland.

There were no significant developments in the field of anti-discrimination law and policy. Although, the political situation was stable and the coalition government had a majority in Parliament, the Government did not finalise and introduce a project of Act on anti-discrimination<sup>2</sup>. As a result, Poland has still not transposed the Race Directive (2000/43/EC) correctly into the domestic legal system and does not have a proper body for the promotion of equal treatment. Eventually, the European Commission decided in May 2010 to refer Poland to the European Court of Justice for implementing the directive only in the field of employment.

The report identifies that there is a lack of a comprehensive State policy related to anti-racism and anti-discrimination as well as the phenomenon of migration. Moreover, knowledge of the existing laws and standards on anti-discrimination and anti-racism among State and local authorities' officials, police officers, employers and other relevant actors is at times very poor. This situation leads, in some cases, to deliberate, but in most instances to unintended discrimination. However, the State does little to counter this. Due to the fact that there is great confusion regarding the competences of bodies which tackle the problems of racism and discrimination do little to improve the situation. Finally, in 2009 there was an increase in the number of crimes motivated by racism and xenophobia. On the other hand, some important judgments were issued, for example for the first time an organisation was outlawed on the grounds of propagation of Nazism and racist behaviours of its members.

The main findings are presented in the sections IV, V and VI of the report. The first identifies the groups vulnerable to racism and discrimination and presents data and general information on these communities. The next chapter focuses on the manifestations of racism and religious discrimination. The author tries to provide an overview of the situation in Poland in 8 categories, relevant cases and good practices of the NGOs. Chapter VI concentrates on the policies of the State, the jurisprudence of the Courts and presents the assessments of the non-governmental organisations working in the field of discrimination. Special attention is paid to the anti-discrimination policy of the State, incorrect implementation of the Race Directive and the role and actions of the Government Plenipotentiary for Equal Treatment. Moreover, significant judgments on racism related cases are presented as well as developments in the field of counter terrorism. Migration and integration are another important area discussed.

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<sup>2</sup> Information on the project is available on the web page of the Ministry of Labour and Social Policy: <http://www.mpips.gov.pl/bip/index.php?idkat=1603> [retrieved 12.10.2010].

Finally, chapter VII concludes with the recommendations for policies and actions in relation to anti-discrimination, migration and integration, criminal justice and social inclusion.

## IV. Communities vulnerable to racism and discrimination

The communities most vulnerable to racism and discrimination in Poland are migrants, in particular Chechens, and the Roma. In addition, Jews face problems of negative stereotyping. An emerging problem concerns the growing fear and prejudice against the Muslim community.

The homogeneity of Polish society makes persons who are not Caucasian more visible, and more vulnerable to racist crimes. An analysis of media coverage and police reports show that victims of racist incidents were black people or persons with a darker colour of skin, for example Indian and Roma.

Once a year, a public opinion "Poles' attitude to other nations" is published. People are asked about the most likeable and the most disliked nation. The 2010 survey shows that 47% of Poles do not like Roma, 43% Arabs, 29% Chechens and 27% Jews. On the contrary, respectively 23%, 24%, 28% and 31% like these nations and 25%, 26%, 30% and 35% are indifferent. Indeed, the negative attitude towards the Arab and Roma communities has decreased in the past few years, however, it is still very high. In 2010 for the first time Poles were asked about Chechens, and the number of those like and dislike is almost the same<sup>3</sup>.

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

**Migrants** are a major group vulnerable to discrimination and racism in Poland. By the end of 2009 approximately 90,000 foreigners, mostly from Ukraine, the Russian Federation and Belarus, had valid residence cards<sup>4</sup>. Hence, the percentage of migrants in the total population is less than 0,5%<sup>5</sup>. Undocumented migrants are in particular vulnerable to discrimination and racism. However, there is lack of data available to assess their situation. The reports, media coverage and other sources underline that migrants in Poland are discriminated against in the labour market and in access to housing.

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<sup>3</sup> Centrum Badań Opinii Społecznej, *Komunikat z badań. Stosunek Polaków do innych narodów*, BS/12/2010, Warsaw, January 2010.

<sup>4</sup> Imigranci w Polsce, *Biuletyn Migracyjny*, no 25, February 2010, p. 5, available at: <http://sites.google.com/site/biuletynmigracyjny/archiwum-pdf> [retrieved 30.09.2010].

<sup>5</sup> Imigranci potrzebni od zaraz, *Tygodnik Powszechny*, 11.08.2009, <http://tygodnik.onet.pl/1,31465,druk.html> [retrieved 30.09.2010].

**Chechens** are a major group of asylum seekers and refugees in Poland. In 2009 more than 5,000 persons from Chechnya<sup>6</sup> applied for refugee status and in total more than 13,000<sup>7</sup> were granted a residence permit mostly on the ground of the international protection. The Chechen community faces discrimination in the field of employment, access to housing and education. Media coverage and NGO reports indicate that the number of racist crimes against this group increased in 2009. The developments in Łomża and Białystok were of particular concern in this regard.

Taking into account the negative attitude of the society, stereotypes and often social exclusion, the **Roma community**,<sup>8</sup> are one of the most vulnerable group to discrimination in Poland. A reluctance of the local authorities to assist Roma in improving their housing or social situation, the fact that persons do not want to have Roma neighbours and poverty are the reasons for various types of intolerance.

According to the report of the Department of State, anti-Semitism still exists<sup>9</sup> in Poland. The most common offences against the **Jewish community** amount to the desecration of synagogues and cemeteries. Several such incidents were reported during the year.

There is a lack of information regarding the **Arab community**. However, some cases relating to counter terrorism, recent manifestations against plans to construct a Mosque and the survey presented above, indicates that intolerance towards this group is growing. The media and some politicians, considers Arabs as terrorists which creates an atmosphere of fear.<sup>10</sup>

**Children and youths** of Roma and those of migrant background are discriminated against in schools. In general, the Polish education system does not cater for the needs of pupils from different cultures and religions. Little or no knowledge of the Polish language is an obstacle for the full exercise of the right to free education guaranteed by the Constitution. For example, the schools near the reception centres for asylum seekers are not prepared and teachers working

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<sup>6</sup> Note that the Office for Foreigners, a body responsible for the refugee status determination procedure in Poland, does not split the citizens of the Russian Federation into nationalities. Consequently, only the total number of the citizens of the Russian Federation are provided in the statistics. In 2009 there were in total 5258 asylum seekers from the Russian Federation. Statistics available at a webpage of the Office for Foreigners: <http://www.udsc.gov.pl/> [retrieved 30.09.2010].

<sup>7</sup> Imigranci w Polsce, *Biuletyn Migracyjny...*, op.cit.

<sup>8</sup> According to the available statistics there are 13,000 Roma living in Poland. For more see the webpage of the MoIA: [http://www.mswia.gov.pl/portal/pl/61/37/Charakterystyka\\_mniejszosci\\_narodowych\\_i\\_etnicznych\\_w\\_Polsce.html](http://www.mswia.gov.pl/portal/pl/61/37/Charakterystyka_mniejszosci_narodowych_i_etnicznych_w_Polsce.html) [retrieved 30.09.2010].

<sup>9</sup> US Department of State, *2009 Human Rights Report: Poland*, available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136051.htm> [retrieved 12.10.2010].

<sup>10</sup> Eurowybory: Protasiewicz i Legutko ostrzegają przed islamizacją, *EuroIslam*, 16.05.2009, <http://www.euroislam.pl/index.php/2009/05/eurowybory-protasiewicz-i-legutko-ostrzegaja-przed-islamizacja/> [retrieved 30.09.2010].

there are not trained to respond to the needs of Chechen children. Cases of ghettoisation of Roma and Chechen pupils was reported.

Potentially, disability, sexual orientation and age are grounds for multiple discrimination. Homophobia is still a major problem in Poland and disabled and older persons are discriminated against in the labour market. Moreover, women face some difficulties in exercising their rights.

## V. Manifestations of racism and religious discrimination

### V.i Employment

The most vulnerable groups to discrimination and racism in the field of employment are economic migrants, refugees<sup>11</sup> and the Roma community. The major reasons are complex legal provisions that are not easily understood by migrants and foreigners, lack of knowledge of rights and the abusive practices of employers.

The Polish Society of Anti-Discrimination Law (PSAL) monitored **job announcements** (which were published between April and June 2009). In total 60,727 announcements were monitored, 24,628 of these were discriminatory, mainly on the grounds of sex and age. However, 139 discriminated on the grounds of nationality and ethnicity<sup>12</sup>. Undoubtedly, the analysis shows that employers have little knowledge on anti-discrimination practices and/or no interest in following standards in preparing and publishing a proper job announcement.

A detailed study on **discrimination against foreigners** in the labour market is not available. However, there were several cases that show the main problems and trends in this field. During the first 6 months of 2009, the National Labour Inspectorate received 20 complaints, concerning 200 employers, which were submitted by persons from Ukraine, Turkey, Chechnya, China, India, Egypt and the Philippines<sup>13</sup>. The Institute of Public Affairs (IPA) added that foreigners often need to work longer hours and are not paid for these extra hours, are not paid at all, they are paid less than Polish employees or the social insurance and taxes are not paid by their employer<sup>14</sup>. For instance, a man from Ukraine, working in a restaurant, complained that he was treated worse than Polish employees. He had to do the most difficult tasks, take the night and weekend shifts and was assaulted verbally by his colleagues and employers. After he reported this to his boss the situation worsened<sup>15</sup>. Eventually, he sued the restaurant for discriminating against him<sup>16</sup>. Another case concerned a football player from Nigeria, who was not paid even though he had a work contract<sup>17</sup>. In August, a construction company had changed the conditions in the working contracts of its Chinese employees without informing them and eventually fired them after they

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<sup>11</sup> For the purpose of this report a refugee means a person who was granted a refugee status under the Geneva Convention or another form of international protection – the subsidiary protection. Under the Polish law, rights granted to these two categories are almost the same.

<sup>12</sup> PSAL, *Równe traktowanie w zatrudnieniu. Przepisy a rzeczywistość. Raport z monitoringu ogłoszeń o pracę*, Warsaw 2009.

<sup>13</sup> IPA, *Sąsiedzi czy intruzi? Punkt widzenia praktyków oraz ekspertów. Raport z badań*, Warsaw 2010, p. 24.

<sup>14</sup> *Ibid.*, p. 23.

<sup>15</sup> W. Klaus, K. Wencel, *Dyskryminacja cudzoziemców w Polsce 2009*, Warsaw 2009, p. 27.

<sup>16</sup> At the time of writing of this report the case is still pending in front of the Court.

<sup>17</sup> Information provided by the HFHR.

complained and protested<sup>18</sup>. Furthermore, the Ombudsman highlighted the situation of undocumented migrants from Ukraine, Belarus, India and China that were exploited in so-called 'labour camps'<sup>19</sup>. They did not receive any wages, they worked 16 hours a day, 7 days a week and were often blackmailed<sup>20</sup>.

**Chechens refugees** face difficulties and discrimination in the labour market as well. The Halina Nieć Legal Aid Center (HNLAC) explains that negative stereotypes, little or no knowledge of rights and slower integration within society are reasons for discriminatory practices<sup>21</sup>. Consequently, cases were reported of refugees from Chechnya that were paid less than their Polish counterparts, not paid at all and cases where employers did not want to sign any type of contract with them<sup>22</sup>.

Although, there is lack of information regarding **discrimination against Muslims** in the labour market, a case from Poznań illustrates an irrational fear that could be more common. A person of Arab origin was not offered a job of a cleaner because a potential employer explained that he could scare clients and other co-workers away. Eventually, he found a job in a restaurant owned by a fellow Arab person<sup>23</sup>.

Finally, according to the Ministry of Interior and Administration (MoIA) the unemployment rate among the **Roma community** in 2009 was 97%, 99% in Kujawsko-Pomorskie Voivodeship and the lowest 60% in Mazowieckie Voivodeship<sup>24</sup>. Indeed, Roma are trapped in a vicious circle because of low education, the social situation and long-term unemployment. The case of 6 Roma in Legnica shows that, despite of being registered as unemployed in a local jobcentre, they could not start a job as street cleaners within a public works programme. This was due to the fact they needed a certain level of education. They had not finished a primary school, thus according to a jobcentre, were not eligible to participate in the public works programme<sup>25</sup>. The Helsinki Foundation for Human Rights underlined for example that Roma assistants, working for

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<sup>18</sup> Pudzianowska: Eksperyment przed Euro 2012, *Krytyka Polityczna*, 19.08.2009, <http://www.krytykapolityczna.pl/Wywiady/Pudzianowska-Eksperyment-przed-Euro-2012/menu-id-77.html> [retrieved 30.09.2010].

<sup>19</sup> The Ombudsman, *Informacja o pracy Rzecznika Praw Obywatelskich. Październik – grudzień 2009*, p. 97, available at: <http://www.rpo.gov.pl/pliki/12640868010.pdf> [retrieved 30.09.2010].

<sup>20</sup> W Polsce też są obozy pracy, *Gazeta.pl*, 16.12.2009, [http://wiadomosci.gazeta.pl/Wiadomosci/1,80708,7369193,W\\_Polsce\\_tez\\_sa\\_obozy\\_pracy.html](http://wiadomosci.gazeta.pl/Wiadomosci/1,80708,7369193,W_Polsce_tez_sa_obozy_pracy.html) [retrieved 30.09.2010].

<sup>21</sup> M. Pajura, M. Lużyński, *Przeciwdziałania dyskryminacji i ksenofobii wobec uchodźców i marginalizowanych migrantów w Polsce*, Cracow 2009, p. 16.

<sup>22</sup> Information provided by the ALI.

<sup>23</sup> N. Bloch, I. Czerniejewska, I. Józwiak, A. Mińkowska, A. Romanowicz, *Cudzoziemcy w Poznaniu. Praca, zdrowie, edukacja*, Poznań 2010, p. 12.

<sup>24</sup> MoIA, *Sprawozdanie z realizacji Programu na rzecz społeczności Romskiej w Polsce za rok 2009*, available at: [http://www.mswia.gov.pl/portals/pl/467/8526/Sprawozdanie\\_z\\_realizacji\\_Programu\\_na\\_rzecz\\_spolecznosci\\_romskiej\\_w\\_Polsce\\_za\\_ro.html](http://www.mswia.gov.pl/portals/pl/467/8526/Sprawozdanie_z_realizacji_Programu_na_rzecz_spolecznosci_romskiej_w_Polsce_za_ro.html) [retrieved 30.09.2010].

<sup>25</sup> Kwalifikacje na sprzątanie, *Związek Romów Polskich*, <http://www.romowie.com/modules.php?name=News&file=article&sid=539> [retrieved 30.09.2010].

several years, were employed only for a fixed time, however, the law requires that a permanent contract be signed if the employee had two successive contracts for a defined period of time<sup>26</sup>.

### **Innovative Roma on the labour market**

In May 2009 the Association of Polish Roma started a project aimed at including unemployed or long-term unemployed Roma in the labour market. Within the project a group of social assistants were trained on different aspects related to job-seeking methods, preparation for the interviews etc. They now work in the field, assisting Roma in finding job, contacting local jobcentres and on other issues related to the labour market.

<http://www.romowie.com/innowacyjni/index.php>

### **V.ii Housing**

Access to housing constitutes a major problem in Poland. There is a shortage of cheap dwellings available on the market, rents are often too high and council housing does not meet existing needs. This makes the situation difficult, not only for citizens, but in particular for migrants, refugees and the Roma. Furthermore in 2009 and at the beginning of 2010 local authorities in Katowice and Łomża started campaigns aimed at closing reception centres for asylum seekers in these towns.

The current housing market structure negatively affects **refugees** and hinders their integration. Refugees are often not able to move out from the reception centres (however, according to the law they are obliged to leave the reception centre within 60 days from the date of being granted international protection), mainly because they cannot find a place to live or afford to rent a flat. In addition, the attitude of potential landlords towards refugees and migrants also plays a key role. On several occasions, NGOs underlined that, Chechens in particular are not able to find accommodation outside reception centres because landlords do not want to rent a dwelling to foreigners from the East. For example, an NGO working in Białystok stated that in order to find a flat for a Chechen family, around 50 phone calls needed to be made. Sometimes, when a landlord is informed that foreigners will rent the property, s/he hangs up, makes a racist comment or just refuses to talk<sup>27</sup>. Moreover, on some occasions landlords required a higher rent for foreigners than they did for Polish citizens<sup>28</sup>.

Although, refugees have the same rights as to access to the council housing, discrimination still exists. The Association for Legal Intervention (ALI) underlines that in some districts in Warsaw, refugees are not added to the lists of persons

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<sup>26</sup> Information provided by the HFHR.

<sup>27</sup> Szkoła przetrwania dla Czeczenów, *Refugee.pl*, 28.04.2009, <http://refugee.pl/?mod=knowbase&path=2551&PHPSESSID=039207a632ee730b6f73214f5dcb96a4> [retrieved 30.09.2010].

<sup>28</sup> Information provided by the ALI.

waiting for council housing, because they are not considered 'as a permanent inhabitant of a given district'<sup>29</sup>. This policy is discriminatory and violates the law.<sup>30</sup>

Similar policies are in place regarding the Roma community. Living and sanitary conditions in Roma settlements are poor and some of houses are constructed in breach of the law<sup>31</sup>. Roma organisations underline that local authorities are rather hostile and make an access to the council housing virtually impossible for the Roma<sup>32</sup>.

In 2009 and in the beginning of 2010 the local authorities in Katowice and Łomża campaigned for the closure of **reception centres for asylum seekers** in these cities and the authorities of Jastrzębia Góra were opposed to the plans of opening of a new centre near the town.

In January 2009 the **reception centre in Katowice** was closed, after the local authorities argued that it was located in one of the poorest districts of the city. According to them, the reception centre hindered the improvement of situation, as the district concerned had its own 'serious social problems', such as the high rate of unemployment, criminal behaviour and alcoholism<sup>33</sup>. Moreover, the local population complained about the behaviour of Chechen children, the increase in crime and begging in the neighbourhood. On the contrary, the director of the reception centre and the local NGOs, among with the Office for Foreigners (OF), underlined that whilst some problems existed, the general situation was quite good and the progress was being made towards integrating the inhabitants of the centre with the local population<sup>34</sup>.

A slightly different concern was raised in regards to a **reception centre** for 200 asylum seekers located in **Łomża**. In an interpellation to the MoIA, Lech Kołakowski a member of the Lower Chamber of the Parliament (Law and Justice party, Prawo i Sprawiedliwość - PiS), argued, in June 2009, that refugees and asylum seekers were a financial burden to the city of Łomża and this situation had a negative influence on the local population<sup>35</sup>. He also suggested that many Chechens who had applied for the international protection in Poland usually provided the RSD authority with false documents. On this ground, he presumed that "half of asylum seekers living in Łomża (...) should not have been granted

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<sup>29</sup> W. Klaus, K. Wencel, *Dyskryminacja...*, *op.cit.*, pp.28-29.

<sup>30</sup> In particular the law on protection of occupants' rights and council housing assets which lays down who and on which grounds is eligible for the council housing. Journal of Laws of 2001, no 71, item 733 with latest amendments.

<sup>31</sup> RAXEN National Focal Point, *Thematic Study. Housing conditions of Roma and Travellers*, March 2009, pp. 29-32.

<sup>32</sup> FRA, *Data in Focus Report. Roma*, 2009, pp. 48-49.

<sup>33</sup> Władze Katowic wyrzucają z miasta ofiary wojny rosyjsko-czeczeńskiej, *Dziennik Zachodni*, 11.12.2008, <http://katowice.naszemiasto.pl/wydarzenia/934312.html> [retrieved 30.09.2010].

<sup>34</sup> Czczeni czekają na gest miasta, *Dziennik Zachodni*, 16.12.2008, <http://www.dziennikzachodni.pl/fakty24/70742.czczeni-czekaja-na-gest-miasta.id.t.html> [retrieved 30.09.2010].

<sup>35</sup> Interpellation available at: <http://orka2.sejm.gov.pl/IZ6.nsf/main/2F1C1AF9> [retrieved 30.09.2010].

international protection”<sup>36</sup>. In addition, he stated that the criminality in the city had increased due to the presence of the Chechens. Later on, Kołakowski started a campaign for the closure of the reception centre in Łomża, requesting the Chief of the Office for Foreigners to shut it down as soon as possible<sup>37</sup>. In addition, local citizens sent a petition to the authorities arguing that they did not feel safe any more and that refugees were taking Polish jobs<sup>38</sup>. The reception centre in Łomża was eventually closed in September 2010.

In **Jastrzębia Góra**, a city near the Baltic Sea coast and a popular tourist destination, the local authorities did not agree to open a new reception centre. The residents supported this decision, arguing that asylum seekers would “scare the tourists away and ruin their businesses”.<sup>39</sup>

### V.iii Education

According to the law, all persons under the age of 18 have the right to free education without any conditions<sup>40</sup>. Moreover, if they do not have a sufficient command of Polish, they should be provided with a language course.

In general, the education system in Poland does not take into **account the needs of pupils with different backgrounds, culture and language**. For example, asylum seeking children or refugee children are not able to follow the classes, books and other materials, simply because they do not have a sufficient command of the Polish language. This makes a discrepancy between Polish and non-Polish pupils who are in the same class, and, in fact, lowers the learning process of foreign children. The Polish Migration Forum (PMF) underlines that the lack of attention to the needs of these pupils discriminates against persons who do not have a sufficient command of the Polish language or do not speak Polish language at all. Consequently, the law is not implemented in practice.<sup>41</sup> For instance, two girl asylum seekers came to Poland in September, thus after the test date which is scheduled for asylum seeker children to determine their level of education. No additional test was scheduled and additional Polish language classes were not offered. They were sent to a school, even though they did not speak Polish. During the school year, the teacher asked them to rewrite some Polish texts, but they were not asked to do anything else. Consequently, they did not pass the final exam well and were not admitted to high-school. Only

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<sup>36</sup> *Ibid.*

<sup>37</sup> Posel wystąpił z wnioskiem o likwidację ośrodka dla uchodźców, *Refugee.pl*, 30.09.2009, <http://refugee.pl/?mod=knowbase&path=2709&PHPSESSID=80a1a4d11483e2fdc6c9e90fa3b73aa1> [retrieved 30.09.2010].

<sup>38</sup> W Łomży nie chcą Czeczenów, *Dziennik.pl*, 24.02.2010, <http://wiadomosci.dziennik.pl/wydarzenia/artykuly/112144,w-lomzy-nie-chca-czeczenow.html,2> [retrieved 30.09.2010].

<sup>39</sup> Polska: Jastrzębia Góra nie chce uchodźców z Czeczenii, *Refugee.pl*, 26.01.2009, <http://refugee.pl/index.php?mod=knowbase&path=2464&PHPSESSID=0a8ff1b492a00b97db97c07d15462f71> [retrieved 30.09.2010].

<sup>40</sup> Art. 70(1) of the Constitution of the Republic of Poland.

<sup>41</sup> Information provided by the PMF.

with the support of the ALI they were eventually accepted in another school<sup>42</sup>. PMF adds that according to the existing regulations a pupil who has ADHD, dyslexia, dysgraphia or any other problems could ask for an extra time to complete a final exam. However, this only applies to Polish pupils and no such possibility is available for foreign children<sup>43</sup>. Finally, schools at times require from an asylum seeking pupils to present a personal identification number (PESEL) or a record of a place of residence, which, according to the law, an asylum seeker is not entitled to get during the RSD procedure. Sometimes, on this ground, a school does not allow a child to attend classes<sup>44</sup>. A lack of a PESEL number was a reason why an asylum seeking pupil could not borrow the books from a school library<sup>45</sup>.

The problems in education of **Chechen asylum seeking children** were also highlighted by the Ombudsman in June 2009 in his letter to the Ministry of Education. In particular, he was concerned regarding the standard of education provided to this group, the lack of knowledge of Polish and Chechen languages among pupils and teachers and the lack of or no training available for teachers on multiculturalism, psychological problems and other relevant issues. This situation, according to the Ombudsman, leads to discriminatory practices, and to instances of Chechen students being separated in the classroom for example. Moreover, it makes differences in the education levels between Polish and non-Polish pupils even more visible<sup>46</sup>. The situation in a school in Emolinek showed that this is a real problem. One third of the total number of pupils attending the school were from Chechnya. Consequently, the students had a poor or little grasp of the Polish language, which meant that they could not meaningfully integrate with their fellow pupils and eventually the Chechen students were ghettoised<sup>47</sup>. The ineffectiveness in the education process led to a decision of the separation of the group of Chechens, by sending them to different schools<sup>48</sup>.

**'I know, I read, I understand'. The innovative methods of teaching the asylum seeking children.**

A project, coordinated by a group of teachers and friends of an intercultural high school in Warsaw, was designated for Polish and foreign teachers working in kindergartens. It aimed at training and providing them with special teaching tools and methods adjusted to the needs of foreign pupils.

<http://www.wiemczytamrozumieciem.edu.pl/>

<sup>42</sup> W. Klaus, K. Wencel, *Dyskryminacja...*, *op.cit.*, p. 8.

<sup>43</sup> Information provided by the PMF.

<sup>44</sup> W. Klaus, K. Wencel, *Dyskryminacja...*, *op.cit.*, p. 8.

<sup>45</sup> Information provided by the PMF.

<sup>46</sup> The Ombudsman, *Informacja o pracy Rzecznika Praw Obywatelskich, lipiec-wrzesień 2009*, pp. 18-19 available at: <http://www.rpo.gov.pl/pliki/12567390520.pdf> [retrieved 30.09.2010].

<sup>47</sup> Szkoła traumy dla naszych i czeczeńskich uczniów, *Polska – The Times*, 24.06.2009, available at: [http://www.brpd.gov.pl/media/2009\\_06\\_24\\_polska\\_metropolia\\_warszawska.pdf](http://www.brpd.gov.pl/media/2009_06_24_polska_metropolia_warszawska.pdf) [retrieved 30.09.2009].

<sup>48</sup> HFHR, *Letter from the Government Plenipotentiary for Equal Treatment to the Helsinki Foundation for Human Rights dated 25.09.2009*, ref. no. BPRT-4551-5(2)/09/NKZ.

At the beginning of 2009 the Ministry of Education stated that it would not request a publisher to remove from a workbook a **racist exercise**. According to the explanation, the workbook is not on the official list of books that are used in Polish schools. It is, however, the workbook of mathematical exercises for a popular mathematic contest in Poland and many pupils use it for preparation. The text of the given exercise was as follows: "A boat, with 15 Christians and 15 Turks on board, is sinking. It can only be saved by making it lighter. This can be done if half of the people on board jump out of the boat. A Christian proposed that every ninth person should jump into the water. Question: How should Christians stand so that only Turks will die?"<sup>49</sup> By the end of March 2010 the exercise was not removed from the workbook<sup>50</sup>.

In August 2008 The Minister of Education announced that until 2012 all 'special classes' for **Roma children** would cease to exist. This decision was a consequence of the situation in Maszkowice, where Roma children used a separate entrance to a school building and a separate class for Roma was created.<sup>51</sup> The problem of sending Roma pupils to special schools, only because they did not have a sufficient grasp of the Polish language was also highlighted<sup>52</sup>. These issues were not solved over the course of 2009. It is unknown how many Roma children are placed in special classes.

#### **Monitoring of Roma children segregation in schools.**

The Association of Roma in Poland started at the beginning of 2010 a project aiming at monitoring the situation of Roma children in schools. The project is to be finished at the beginning of 2011 and aims at providing recommendations and developing teaching programmes.

<http://www.stowarzyszenie.romowie.net/index.php/czytnik-aktualnosci/items/projekt-badawczy-stowarzyszenia-romow-w-polsce-w-ramach-dotacji-z-fundacji-imstefana-batorego.html>

#### **V.iv Health**

In general the health care system in Poland is not properly functioning. There are difficulties in consulting specialists and the waiting time for surgeries, medical tests and other treatment is rather long. In 2009 and the beginning of 2010 there were not many reports on mistreatment on the grounds of race or ethnicity. However, migrants and asylum seekers are vulnerable to discrimination in the field of health.

<sup>49</sup> *Wzór na topienie Turka*, Tygodnik Powszechny, 09.04.2009, <http://tygodnik.onet.pl/30.0.25113.1.artykul.html> [retrieved 30.09.2010].

<sup>50</sup> MEN nie zajmie się rasistowskimi treściami w ćwiczeniach matematycznych, *RMF24*, 22.03.2010, [http://www.rmf24.pl/fakty/polska/news-men-nie-zajmie-sie-rasistowskimi-tresciami-w-cwiczeniach\\_nld,242857](http://www.rmf24.pl/fakty/polska/news-men-nie-zajmie-sie-rasistowskimi-tresciami-w-cwiczeniach_nld,242857) [retrieved 30.09.2010].

<sup>51</sup> Wojewoda łagodzi konflikt polsko-romski, *Gazeta.pl*, 30.06.2008, <http://krakow.gazeta.pl/krakow/1,44425,5408258.html> [retrieved 30.09.2010].

<sup>52</sup> Segregacja klasowa, *Gazeta.pl*, 31.07.2008, <http://wiadomosci.gazeta.pl/Wiadomosci/1,80325,5500395.html> [retrieved 30.09.2010].

The Polish Migration Forum underlines that the rights of **foreign patients** are not respected. They are often not informed about their rights and at times; do not even know what treatment was given or what kind of illnesses they had<sup>53</sup>. ALP adds that the language barrier makes communication difficult. Sometimes, foreigners are asked to come on another day to register for a test or schedule a meeting with a doctor, and when they come back they are asked to come next day.<sup>54</sup>.

The Helsinki Foundation for Human Rights was informed about a man who was assaulted by the personnel of a hospital in Warsaw while taking a medical test necessary to apply for a position of a bus driver. He was told that he did not deserve the job and a doctor made some comments on his race. Finally, he was informed that the results of the test were not good. Next day, he took the same test in another place and it appeared that the results were fine<sup>55</sup>.

Although, **asylum seekers** have full access to the medical treatment during the refugee status determination procedure, they face a lot of difficulties in exercising this right. An asylum seeker child from Chechnya, who suffered from epilepsy, was issued valid medical documentation in Austria. After being transferred to Poland, her father approached a hospital asking for medical assistance for his child. The hospital stated that it could not provide any treatment because he had no insurance. However, according to the law, a person in the refugee procedure is entitled to the free medical assistance<sup>56</sup>. Monitoring medical assistance for asylum seekers shows in several cases the cultural specificities and the needs of persons with special needs are ignored. For example, women from Chechnya do not want to be examined by a male gynaecologist and are ashamed to be examined in front of their husbands after such visits. On the other hand, men usually do not want to talk with a female psychologist. Moreover, there are problems in access to adequate assistance for disabled persons, sometimes they are not provided with special certificates, consequently being considered as persons with no special-needs<sup>57</sup>.

## V.v Policing and ethnic profiling

The Institute of Public Affairs (IPA) conducted a survey among migrants asking how they were treated by the police and border guard officers. Respondents answered that their general impression was that they were not treated with respect. They underlined, for example, that at the border, the border guard officers often addressed a person of East European origin not in a formal way

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<sup>53</sup> Information provided by the PMF.

<sup>54</sup> Information provided by the ALI.

<sup>55</sup> HFHR, *The case described in the letter from the Mazowiecki patients rights advocate to the Helsinki Foundation for Human Rights dated 28.08.2009*, ref. No. SSW-076-7-2-IP/09.

<sup>56</sup> M. Pajura, M. Lużyński, *Przeciwdziałania dyskryminacji...*, op.cit., p.11.

<sup>57</sup> M. Książak (eds.), *Monitoring opieki medycznej i psychologicznej nad matkami i dziećmi w ośrodkach dla osób ubiegających się o status uchodźcy, ze szczególnym uwzględnieniem potrzeb osób będących ofiarami tortur, oraz fizycznych i psychicznych urazów wojennych*, Warsaw 2009, pp. 110-113.

(Sir, Madam) but in an informal way (you). Polish citizens, however, are addressed in the correct manner<sup>58</sup>.

**Foreigners** usually complain that police officers do not draw enough attention to their cases, that they are not informed about their rights and often are not provided with the required documentation (for instance a copy of a given statement). According to the ALI, foreigners who were attacked due to purely racist reasons, face problems in lodging official complaints at the police station. Sometimes, the police officers do not want to qualify these kind of crimes as racist. For instance, police officers in Warsaw, did not register a complaint of a Pakistani man, who had been beaten up on a street in Warsaw. Even though, he had good Polish, they requested an interpreter and did not want to have an interview with him<sup>59</sup>. In another incident, a Chechen boy, an asylum seeker, was arrested and held for 48 hours and was verbally abused by police officers. He was eventually released, however, the normal protocol was not followed and he was not given any documents in relation to his arrest. The family decided not to complain about this incident, as they thought that it could affect the asylum procedure<sup>60</sup>.

The policy of the border guards towards **foreigners who want to get married** constitutes a major problem. According to the ALI and other NGOs border guards request from the Register Office information about foreigners registered to get married. On the day of the marriage the border guards appear in the Register Office to control the legality of the bride or groom. If they are undocumented migrants, they are arrested and transferred to a deportation centre<sup>61</sup>. According to Polish law, marrying a Polish citizen is a possible ground to legalise their stay, even if a person is undocumented migrant.

## **V.vi Racist violence and crime**

Racist violence and crime increased in 2009 compared to previous years. According to the statistics provided by the Police there were 46 crimes committed under Article 257 and 53 crimes committed under Article. 256 of the Penal Code<sup>62</sup>. This can be compared to 53 and 63 respectively in 2008<sup>63</sup>. Furthermore, the Office of the General Prosecutor registered 124 new cases during the year (in 2008 there were 98 and in 2007 – 41 new cases), 44 in Warsaw, 35 in Wrocław, 20 in Lublin, 19 in Cracow, 13 in Białystok and 9 in Gdańsk. In total 166 proceedings were underway in 2009, 54 of them concerned internet crimes, 8 books and other publications, 4 were related to a behaviour of football fans, 3 – in relation to the desecration of cemeteries and 10 – racist graffiti. Moreover, 85 offences were qualified under the Art. 256, 93 – Art. 257 and 13 – Art. 119.

<sup>58</sup> IPA, *Sąsiedzi czy intruzi?...*, *op.cit.*, p. 21.

<sup>59</sup> W. Klaus, K. Wencel, *Dyskryminacja...*, *op.cit.*, p. 24.

<sup>60</sup> M. Pajura, M. Lużyński, *Przeciwdziałania dyskryminacji...*, *op.cit.*, p.12.

<sup>61</sup> W. Klaus, K. Wencel, *Dyskryminacja...*, *op.cit.*, p. 35-36.

<sup>62</sup> See subchapter – VI.iii.i Racism as a crime – for an explanation of each of these articles.

<sup>63</sup> The Police, statistics for 2009, available at: <http://www.policja.pl/portal.php?serwis=pol&dzial=31> [retrieved 30.09.2010].

Finally, in 2009 the courts issued 27 judgments, 24 of them found the accused guilty. On the other hand, the crime detection rate was lower than in 2008. For instance, in 2008 the prosecutors in 33 cases charged 58 persons with crimes under Art. 256 or 257 of the Penal Code, in 2009 there were 30 cases and 54 persons respectively. Moreover, 73 cases were discontinued, mainly (42 cases) because the perpetrators were not detected. The latter number is also higher than in 2008 and 2007, as respectively there were 24 and 11 such decisions<sup>64</sup>.

The media and NGOs reported on several of these racist crimes, mainly cases relating to physical and verbal abuse as well as the desecration of property (including cemeteries).

In March 2009 a black student from Sweden was verbally and physically abused by three men in a shopping mall in Białystok. In front of a shop they shouted at her in Polish and English, calling her a 'black monkey'. A few minutes later she was hit in the face. During the trial one of the perpetrators argued that he had done it because 'she had looked at him strangely'<sup>65</sup>. In May another black person, a French citizen, was beaten at a bus stop by a group of unknown men<sup>66</sup>. Also in May in Bielsko Biała a black student from France was attacked and beaten up. A few days later in Wrocław another student, from Nigeria, was assaulted by a group of men. They were shouting at him 'gorilla', 'back to Africa' and 'you black bitch'. In June a Somali man had been brutally beaten by an unknown group and was left unconscious near Gdańsk<sup>67</sup>.

#### **A special phone line for foreign students residing in Warsaw.**

The Collegium Civitas, an university in Warsaw, in cooperation with Afryka Inaczej (a NGO based in Warsaw) started to run a special phone line for African students living in Warsaw. In a case of emergency a person could call and ask for assistance. The phone line is operated by persons from Africa, who speak English, French, Portuguese and Polish and know the city and the Polish reality. [http://warszawa.gazeta.pl/warszawa/1,34889,7273373,Infolinia\\_ktora\\_pomoze\\_zwalczyc\\_rasizm.html](http://warszawa.gazeta.pl/warszawa/1,34889,7273373,Infolinia_ktora_pomoze_zwalczyc_rasizm.html)

**Chechens** were also the target of racist violence. For instance, in September in Białystok, stones and Molotov cocktails were thrown at a flat of a Chechen

<sup>64</sup> The General Prosecutor Office, *Wyciąg ze sprawozdania dotyczącego spraw prowadzonych w 2009r. w jednostkach organizacyjnych prokuratury z pobudek rasistowskich lub ksenofobicznych (tj. spraw zarejestrowanych, wszczętych w tym okresie oraz kontynuowanych w tym okresie a wszczętych, czy też zarejestrowanych we wcześniejszym okresie) sporządzony na podstawie danych przekazanych przez prokuratury apelacyjne*, Warsaw 2010.

<sup>65</sup> Information provided by the HFHR.

<sup>66</sup> Rasizm – eskalacja, *Gazeta.pl*, 05.05.2009,

[http://bialystok.gazeta.pl/bialystok/1,35241,6574820,Rasizm\\_eskalacja.html?as=1&startsz=x](http://bialystok.gazeta.pl/bialystok/1,35241,6574820,Rasizm_eskalacja.html?as=1&startsz=x) [retrieved 30.09.2010].

<sup>67</sup> Never Again Association, *Katalog Wypadków – Brunatna Księga, 2008-2009*, available at: [http://nigdywiecej.org.pl/images/numer\\_18/katalog\\_wypadkow.pdf](http://nigdywiecej.org.pl/images/numer_18/katalog_wypadkow.pdf) [retrieved 30.09.2010].

family<sup>68</sup>. In Łomża, presumably as a result of the campaign of Lech Kołakowski (see above), the attacks on Chechens in the city increased. In October two Chechen women walking in the city centre were beaten by a man<sup>69</sup>. In January 2010 the prosecutor's office started an investigation on racist publications of Chechens in Łomża available on the internet<sup>70</sup>. A month later, two teenagers were charged, after sticking posters with slogans 'we do not want you here' and 'get out from our city'<sup>71</sup>.

There were several racist incidents in **football stadiums**. The most common concerned the monkey-like sounds made, usually, by fans of the opposing team<sup>72</sup>, throwing bananas at black football players and other verbal abuses. However, there was also a case of a Nigerian player who punched his fellow teammate after he had called him a 'fucking nigger'<sup>73</sup>. Moreover, Poland was named the most anti-Semitic country by the Football Against Racism in Europe (FARE)<sup>74</sup>.

**Temples and other religious property** were the target of racist acts. During the year Roma and Jews cemeteries were desecrated in various cities. Moreover, anti-Semitic signs, racists graffiti and symbols of Nazism were drawn on synagogues. In addition, there was an arson attempt in a synagogue in Białystok.<sup>75</sup>

#### **Przestrzeń Miasta (City Space)**

The project aims at developing among young Poles a civil attitude on racism and dignity related matters. The campaign is open to everyone and everyone can be a part of it. Persons are asked to take a photo of a racist poster or graffiti and upload it to a database available online. The moderators of the webpage periodically send information about abusive posters and graffiti to the police, which compels the administrators and owners of the buildings to remove it.

<http://www.przestrzenmiasta.pl/en/>

<sup>68</sup> Atak na Czechenów w Białymstoku, *TVP.pl*, 18.09.2009, <http://www.tvp.pl/bialystok/aktualnosci/kryminalne/atak-na-czechenow-w-bialymstoku/929015> [retrieved 30.09.2010].

<sup>69</sup> Never Again Association, *Katalog Wypadków...*, *op.cit.*

<sup>70</sup> Internatowa wojna polsko-czeczeńska pod lupą prokuratury, *EuropIslam*, 06.01.2010, <http://www.europislam.pl/index.php/2010/01/internetowa-wojna-polsko-czeczenska-pod-lupa-prokuratury/> [retrieved 30.09.2010].

<sup>71</sup> Łomża: zarzut dla nastolatków podejrzanych o znieważanie Czechenów, *Gazeta.pl*, 26.02.2010, [http://wiadomosci.gazeta.pl/Wiadomosci/1,80708,7604581,Lomza\\_zarzut\\_dla\\_nastolatkow\\_podejrzanych\\_o\\_zniewazanie.html](http://wiadomosci.gazeta.pl/Wiadomosci/1,80708,7604581,Lomza_zarzut_dla_nastolatkow_podejrzanych_o_zniewazanie.html) [retrieved 30.09.2010].

<sup>72</sup> Kibole ŁKS Udawali małpy w Poznaniu, *Gazeta.pl*, 07.11.2009, [http://poznan.gazeta.pl/poznan/1,36006,7232614,Kibole\\_LKS\\_Udawali\\_malpy\\_w\\_Poznaniu.html](http://poznan.gazeta.pl/poznan/1,36006,7232614,Kibole_LKS_Udawali_malpy_w_Poznaniu.html) [retrieved 30.09.2010].

<sup>73</sup> Znokautował kolegę z drużyny za rasizm, *Dziennik.pl*, 18.09.2009, <http://wiadomosci.dziennik.pl/sport/pilka-nozna/artykuly/96189,znokautowal-kolege-z-druzyny-za-rasizm.html> [retrieved 30.09.2010].

<sup>74</sup> Polska najbardziej antysemitycznym krajem, *Dziennik.pl*, 04.03.2009, <http://wiadomosci.dziennik.pl/sport/pilka-nozna/artykuly/140570,polska-najbardziej-antysemitycznym-krajem.html> [retrieved 30.09.2009].

<sup>75</sup> Never Again Association, *Katalog Wypadków*, *op.cit.*

## V.vii Access to goods and services in the public and private sector

There is a little information available on the access to goods and services in the private sector on the ground of racism or discrimination, ethnicity or nationality. The Roma community and migrants complain that the authorities and public officers on different levels treat them with little respect or kindness. Roma complain that they do not even try to understand their problems and they are motivated by negative stereotypes and are impolite<sup>76</sup>. Migrants have little trust in the public administration and local authorities in Poland. The Institute of Public Administration's research shows that the usual behaviour of officials does not amount to discrimination, however, migrants still feel discriminated against<sup>77</sup>.

In September 2009, the local population did not want to or agree to build a **community centre for Roma in Koszary** (Małopolska Voivodeship). The money for this project came from the National Programme for Roma Community in Poland operated by the Ministry of Interior and Administration and could be spent exclusively on projects designated for Roma. However, an administrator of the village (wójt) stated that either the community centre or a local road could be built with these funds. Hence, the residents rejected the idea of a community centre, although, the funds available were exclusively for Roma projects<sup>78</sup>. As a result of the protest, the money was lost and the community centre was not built. Consequently, the Roma community were deprived of access to a public service.

The Muslim League in Poland presented a project for a Centre of Muslim Culture in Warsaw (with a Mosque as a part of it), sponsored by a private person from the Saudi Arabia. In March 2010 a protest against it was organized by the Association Future Europe (Stowarzyszenie Europea Przyszłości). Around 200 protesters shouted that 'political Islam is dangerous', 'no, for a Mosque in Warsaw' and 'Today Mosque, tomorrow Jihad'. The organisers argued, in one newspaper, that "we will always protest when, the fundamental values of Europe are violated. We do not want in our country women in scarves, terrorism and violence. We want freedom. We are not against Islam, only against radicalism"<sup>79</sup>.

In Tuszyn, a small town near Łódź, with a large Muslim community, the Mayor did not agree to use a room in a Cultural Centre for the purpose of meeting the town residents related to the Muslim culture and religion. The aim of that meeting was to build a platform of mutual understanding between Muslims and non-

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<sup>76</sup> MoIA, *Protokół z VII posiedzenia Zespołu do Spraw Romskich, Warszawa 16 czerwca 2009*, available at: [http://www.mswia.gov.pl/portal/pl/473/7739/VII\\_posiedzenie\\_Zespołu\\_do\\_Spraw\\_Romskich\\_Komisji\\_Wspolnej\\_Rządu\\_i\\_Mniejszości\\_N.html](http://www.mswia.gov.pl/portal/pl/473/7739/VII_posiedzenie_Zespołu_do_Spraw_Romskich_Komisji_Wspolnej_Rządu_i_Mniejszości_N.html) [retrieved 30.09.2010].

<sup>77</sup> IPA, *Sąsiedzi czy intruzy?...*, *op.cit.*, p. 21.

<sup>78</sup> *Cyganów nie lubię, co raczej się podoba*, *Gazeta.pl*, 27.10.2009, [http://wyborcza.pl/1,76842,7180130,Cyganow\\_nie\\_lubie\\_co\\_raczej\\_sie\\_podoba.html?as=4&startsz=x](http://wyborcza.pl/1,76842,7180130,Cyganow_nie_lubie_co_raczej_sie_podoba.html?as=4&startsz=x) [retrieved 30.09.2010].

<sup>79</sup> *Protestowali przeciw budowie meczetu na Ochocie*, *Gazeta.pl*, 27.03.2010, [http://warszawa.gazeta.pl/warszawa/1,34889,7708462,Protestowali\\_przeciw\\_budowie\\_meczetu\\_na\\_Ochocie.html](http://warszawa.gazeta.pl/warszawa/1,34889,7708462,Protestowali_przeciw_budowie_meczetu_na_Ochocie.html) [retrieved 30.09.2010].

Muslims living there. According to the witnesses the Mayor argued that he would not support terrorism. Eventually, the meeting was organised in a fire station<sup>80</sup>.

### **V.viii Media, including the internet**

The Polish internet is filled with xenophobic, homophobic and racist posts and comments and is a platform of uncontrolled anger, rudeness and unacceptable behaviours hidden behind anonymity and impunity. Racist comments on Roma, Jews and Muslims are posted on a regular basis. The IPA underlines that the media and journalists are usually only interested in 'catchy' information and generalisations and pejorative language is used in the articles or reportages related to migrants and refugees<sup>81</sup>.

Several racist films were available on the **internet**. They concerned the Roma community and Chechen asylum seekers. The film "A life of a Chechen, find out to whom your taxes go" contained several racist comments and hate speech. Eventually, it was removed.

The **RedWatch** webpage operated during the year, as the Polish authorities, according to the HFHR, were unable to deal with this problem. The web has been operating since 2006, and has propagated Nazism and racism as well as maintaining a list of persons who are a threat to the Polish society<sup>82</sup>.

#### **Monitoring of the media and the jurisprudence related to racism and xenophobia.**

Otwarta Rzeczpospolita (OR), an NGO based in Warsaw, prepared in 2009 a compilation of press articles related to racism, xenophobia and intolerance, an analysis of the Courts' judgments on racist violence and crimes and a list of projects on multiculturalism and tolerance. OR reports on racism incidents in Poland and maintains a dialogue with central and local authorities.

<http://www.otwarta.org/>

**The Radio Maryja and Trwam television** for the past number of years have broadcasted anti-Semitic, anti-German and anti-Russian reportages and discussions. They both describe themselves as patriotic and Catholic and are owned and directed by a member of the Polish Congregation of the Most Holy Redeemer Order – father Tadesz Rydzyski. Throughout the year, several anti-Semitic views and statements were presented on the radio. For example, it was said that the propaganda of the Jewish culture and the Jewish point of view is unbearable (31 January 2009). Later on, a museum of Jewish culture and

<sup>80</sup> OR, *Muzułmanie to terroryści? List do Burmistrza Miasta Tuszyna*, 28.03.2009, <http://otwarta.org/muzułmanie-to-terrorysci-list-do-burmistrza-miasta-tuszyna,510.html> [retrieved 30.09.2010].

<sup>81</sup> IPA, *Sąsiedzi czy intruzi?...*, *op.cit.*, p. 26.

<sup>82</sup> HFHR, *Replies to "the list of issues" presented by the rapporteur Concerning the reports (seventeenth, eighteenth and Nineteenth) submitted by Poland under article 9 of the International convention on the elimination of all forms of Racial discrimination (CERD/C/POL/19)*, July 2009, p.2, [http://www2.ohchr.org/english/bodies/cerd/docs/ngos/HFHR\\_poland75.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/HFHR_poland75.pdf) [retrieved 30.09.2010].

tradition, which is being built in Warsaw, was compared to a tube that would spread anti-Polish propaganda (27 June 2009). Moreover, Russians were described as a nation only able to murder and to drink vodka (17 January 2009). Germans were described as an aggressive nation that would take Polish lands (for example 27 September 2009). In March 2009 the Polish Council on Ethics condemned Radio Maryja for its anti-Semitism content<sup>83</sup>. However, neither the state nor the Catholic church authorities, so far, have been able to deal with the problem of Radio Maryja and TV Trwam.

Father **Tadeusz Rydzyk** was also widely criticised for his racist comments in July 2009 in Częstochowa. He said, while addressing a fellow black father, “Oh my God... He has not cleaned himself up. Look!”<sup>84</sup>. Rydzyk, eventually, apologised for that incident.

Another public person, **Janusz Piechociński** (Polish Peoples’ Party – PSL), during the European Parliament election campaign, only employed Nigerians to distribute the leaflets and to erect big posters on the streets. He argued that they were “more effective and efficient as well as more eye-catching”<sup>85</sup>. Piechociński did not consider his comment as racist or discriminatory.

In December 2008 **Piotr Farfał** became an acting President of the management board of the Polish National Television. He was widely criticised for his affiliation with a neo-Nazi group<sup>86</sup>. The Court ruled that the decision of the management board on electing him was valid and in accordance with the law. Farfał was eventually dismissed from the board in December 2009.

Finally, there were also some controversial **commercials**. A poster showed a half-naked black woman advertising a product and the slogan ‘Black Mamba’ (Czarna Mamba), to advertise a roofing membrane. According to the ALI this commercial violated the dignity and feelings of black persons, due to the negative connotation between the word papa asfaltowa – roofing membrane (literal translation an asphalt roofing) and the picture of a black person. The word asphalt in Polish is often used as an offensive term for a black person<sup>87</sup>. Furthermore, the Polish branch of Microsoft needed to explain why a black person was removed and replaced by a white person in the Polish version of a layout of a global advertisement. Eventually, Microsoft apologised for the mistake

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<sup>83</sup> Rada Etyki Mediów, *Oświadczenie REM W związku z wypowiedzią w dniu 31 stycznia 2009 r. na antenie rozgłośni Radio Maryja Prof. Bogusława Wolniewicza*, 27.02.2009, [http://www.radaetykimediaow.pl/dokumenty\\_rem2009\\_03.html](http://www.radaetykimediaow.pl/dokumenty_rem2009_03.html) [retrieved 30.09.2010].

<sup>84</sup> Rydzyk o czarnoskórym: On się chyba nie mył, *Dziennik.pl*, 15.07.2009, <http://wiadomosci.dziennik.pl/polityka/artykuly/155092.rydzyk-o-czarnoskorym-on-sie-chyba-nie-myl.html> [retrieved 30.09.2010].

<sup>85</sup> Polityk PSL dyskryminuje czarnoskórych, *Dziennik.pl*, 22.05.2009, <http://wiadomosci.dziennik.pl/polityka/artykuly/150315.polityk-psl-dyskryminuje-czarnoskorzych.html> [retrieved 30.09.2010].

<sup>86</sup> List w sprawie Farfała, *Gazeta.pl*, 1.03.2009, [http://wyborcza.pl/1,76842,6445394,List\\_w\\_sprawie\\_Farfala.html](http://wyborcza.pl/1,76842,6445394,List_w_sprawie_Farfala.html) [retrieved 30.09.2010].

<sup>87</sup> W. Klaus, K. Wencel, *Dyskryminacja...*, *op.cit.*, p. 31-32.

and removed the picture,<sup>88</sup> however, they did not explain why it had happened in a first place. A day later, one of the newspapers reported that the Medical University in Lublin on its Polish version of the webpage had three white persons, while on the English version a white person was replaced by a black person. The University argued that the latter version was for international students, and this was the reason why a black man appeared there<sup>89</sup>. Later on, the English and Polish versions were unified, and the black man was eventually replaced by a white person<sup>90</sup>.

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<sup>88</sup> Microsoft przeprasza za zmianę rasy na polskiej stronie firmy, *Gazeta.pl*, 26.08.2009, [http://wiadomosci.gazeta.pl/Wiadomosci/1,80708,6965140,Microsoft\\_przeprasza\\_za\\_zmiane\\_rasy\\_na\\_polskiej\\_stronie.html](http://wiadomosci.gazeta.pl/Wiadomosci/1,80708,6965140,Microsoft_przeprasza_za_zmiane_rasy_na_polskiej_stronie.html) [retrieved 30.09.2010].

<sup>89</sup> Murzyn dobry ale nie dla Polaków, *Gazeta.pl*, 27.08.2009, <http://wiadomosci.dziennik.pl/wydarzenia/artykuly/157886,murzyn-dobry-ale-nie-dla-polakow.html> [retrieved 30.09.2010].

<sup>90</sup> Uniwersytet Medyczny także usunął Murzyna ze zdjęcia?, *Gazeta.pl*, 26.08.2009, [http://www.alert24.pl/alert24/1,84880,6968824,Uniwersytet\\_Medyczny\\_takze\\_usunal\\_Murzyna\\_ze\\_zdjecia\\_.html](http://www.alert24.pl/alert24/1,84880,6968824,Uniwersytet_Medyczny_takze_usunal_Murzyna_ze_zdjecia_.html) [retrieved 30.09.2010].

## VI. Political and legal context

The period covered by this report was not rich in political developments. During that time Donald Tusk held the office of the Prime Minister, and the Civic Platform (Platforma Obywatelska) in coalition with the Polish People's Party (Polskie Stronnictwo Ludowe) had the majority in the Parliament. Until April 2010 Lech Kaczyński remained the President of the Republic of Poland.

### VI.i Anti discrimination

Poland has not transposed the race directive (2000/43/EC) in all required fields and has not created a fully independent body for the promotion of equal treatment. As a consequence, in May 2010 the European Commission referred Poland to the Court of Justice<sup>91</sup>.

On 15 June 2008 the office of the **Government Plenipotentiary for Equal Treatment** was re-established by Donald Tusk<sup>92</sup>. According to the regulation setting up the office, the Plenipotentiary is appointed by the Prime Minister, holds the rank of Secretary of State and is responsible for conducting the anti-discrimination policy of the Government in the field of sex, gender, ethnicity, nationality, religion, age, political opinions, sexual orientation, marital and family status<sup>93</sup>. It also prepares opinions on anti-discrimination related matters, provides analyses and assessments of the social and legal situation related to discrimination, as well as monitoring equal treatment in Poland<sup>94</sup>. However, the competences laid down in the regulation are not in line with Article 13 of the Race Directive. Firstly, the independence component is missing, as the Plenipotentiary for Equal Treatment is depended on the Prime Minister, and secondly, the body does not provide assistance to victims of discrimination. Ms. Elżbieta Radziszewska was appointed as the Plenipotentiary.

An analysis of the activities of the Plenipotentiary leads to the conclusion that she works on combating discrimination of children in schools and sexual harassment in the work place. The special task teams are to assist the Plenipotentiary in her work on discrimination, however, only 6 such bodies have been created so far. They tackle the problem of discrimination of minors in the mass media,

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<sup>91</sup> The European Commission, *Equality: European Commission refers Poland to Court of Justice over race equality rule*, 04.05.2010, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/531&format=HTML&aged=0&language=EN&guiLanguage=en> [retrieved 30.09.2010].

<sup>92</sup> The Government of Kazimierz Marcinkiewicz, decided in 2005 to create the Department of Women, Family and Counteracting Discrimination in the Ministry of Labour and Social Policy instead of coordinating the equal policy through the Plenipotentiary. Several NGOs criticised this decision, arguing that the Government in fact was against the Plenipotentiary and by creating a Department just wanted just to calm the European Commission down.

<sup>93</sup> Note that the disability was added later, in June 2010.

<sup>94</sup> *Rozporządzenie Rady Ministrów z dnia 22 kwietnia 2008 r. w sprawie Pełnomocnika Rządu do spraw Równego Traktowania*, Journal of Law 2008, no 75, item 450.

discrimination of children suffering from chronic diseases, mobbing, discrimination of fathers and women, as well as discrimination of children whose parents emigrated to another state.

No analysis, report or monitoring of discrimination in the grounds listed in the regulation has been prepared or are not available publically. In 2009 and at the beginning of 2010 there was no information on discrimination on grounds other than sex available on the webpage of the Plenipotentiary's office. Moreover, only two types of campaigns have been coordinated by the Plenipotentiary so far. They concerned the safety of children on the internet and the rights of fathers.

In general, some NGOs underline that the Plenipotentiary does nothing has little effect, and that her work is barely visible.<sup>95</sup> The organisations working in the field of women's rights underline that Radziszewska works on the issues that are 'easy', not directly related to her responsibilities, and discrimination on the ground of sex is not one of the Plenipotentiary's priorities<sup>96</sup>.

The competences of the Plenipotentiary are also unclear. Until the end of 2009, the Department of Women, Family and Counteracting Discrimination in the Ministry of Labour and Social Policy (MLSP) still existed, and was responsible for the anti-discrimination policy of the Government. Moreover, the Ombudsman took several actions related to discrimination and racism. Finally, the Plenipotentiary actions on discrimination of Roma children and discrimination of children who are suffering from chronic diseases are rather the competence of, respectively, the Ministry of Interior and Administration and the Ministry of Health,<sup>97</sup> but foremost of the Ombudsman for Child Rights<sup>98</sup>. Furthermore, ALI has stated that the proper body counteracting discrimination in Poland in fact does not exist. There are the Plenipotentiary for Equal Treatment and the Special Team in the Ministry of Interior and Administration tackling issues related to racisms and xenophobia. Both of these bodies, however, do not meet the requirements of EU law, mainly because, they do not provide victims of discrimination with legal assistance and do not carry out independent surveys on discrimination related matters<sup>99</sup>.

The Plenipotentiary was also criticised for her interview on the implementation of the EU's directives<sup>100</sup>. In December 2009 she stated that there was no need to

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<sup>95</sup> E. Schuman, *Czego nie robi minister*, 04.05.2010, available at: <http://wiadomosci.ngo.pl/wiadomosci/546113.html> [retrieved 30.09.2010].

<sup>96</sup> Radziszewska nie widzi kobiet, *Gazeta.pl*, 09.02.2009, [http://wyborcza.pl/1,85996,6224800,Radziszewska\\_nie\\_widzi\\_kobiet.html](http://wyborcza.pl/1,85996,6224800,Radziszewska_nie_widzi_kobiet.html) [retrieved 30.09.2010].

<sup>97</sup> Elżbieta Radziszewska: minister od niczego, *Gazeta.pl*, 06.02.2009, [http://wyborcza.pl/1,75968,6242286,Elzbieta\\_Radziszewska\\_minister\\_od\\_niczego.html](http://wyborcza.pl/1,75968,6242286,Elzbieta_Radziszewska_minister_od_niczego.html) [retrieved 30.09.2010].

<sup>98</sup> Poland has the Ombudsman and the Ombudsman working exclusively on the child rights.

<sup>99</sup> W. Klaus, K. Wencel, *Dyskryminacja...*, *op.cit.*, p. 44.

<sup>100</sup> For example, in her interview for the Polish Radio, Radziszewska said that the anti-discrimination directives concern mostly the labour market and employment, thus these provisions already had been transposed to the Labour Code. She was against the project of a horizontal act that would tackle the anti-

transpose them and she was confident that Poland would not be referred to the ECJ over that.

The Government has been criticised for suspending for several months works on the proposed **Act on anti-discrimination**. The project was coordinated by the Ministry of Labour and Social Policy (MLSP) since February 2008, however, as of September 2010 the Government postponed its adoption<sup>101</sup>. The project prepared by the MLSP is a horizontal act on discrimination related matters and proposes the appointment of the Ombudsman's office as the body responsible for equal treatment.

At present, the **Race Directive** only implemented into the Labour Code<sup>102</sup>, thus the protection in the field of education, social protection or access to supply of goods and services is not guaranteed.

In October 2009 the Government decided to continue the **National programme for counteracting racial discrimination, xenophobia and related intolerance** for the next three years (2010-2013). The programme was initially run for 5 years, between 2004 and 2009. As a result of a special Task Group for monitoring racism and xenophobia was created to monitor racism, xenophobia and anti-Semitism in Poland in the media and on the internet. Moreover, within the aim of the programme a network of Plenipotentiaries for human rights was created in the police, the border guards headquarters and within the Voivodeship structures. In addition, a special training programme on ethnic minorities, tolerance and equal treatment for the teachers, police, border guards and army was developed.

## VI.ii Migration and integration

Migration to Poland is a new phenomenon and compared to other states, Poland has one of the lowest percentages of foreigners as a proportion of the total population<sup>103</sup>. However, the increasing number of migrants creates a new situation for society and politicians, nevertheless a debate on migration related issues does not exist.

The Institute of Public Administration (IPA) conducted a survey among experts on the **image of migrants in the media**. In general, the media are not interested in this topic. Even if a migration-related issue influences the local population the local media usually do not pay attention to it. It is quite probable that there is a

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discrimination matters. Interview available at: <http://beta.polskieradio.pl/9/299/Artykul/211499.Elzbieta-Radziszewska> [retrieved 30.09.2010].

<sup>101</sup> The project of the Act on anti-discrimination was accepted by the Government in September 2010, however, it was criticized by the Coalition of NGOs working on discrimination related matters. See more at: [http://wiadomosci.gazeta.pl/Wiadomosci/1,81048,8324624,Organizacje\\_krytykuja\\_projekt\\_tzw\\_ustawy\\_ant\\_ydyskryminacyjnej.html](http://wiadomosci.gazeta.pl/Wiadomosci/1,81048,8324624,Organizacje_krytykuja_projekt_tzw_ustawy_ant_ydyskryminacyjnej.html) [retrieved 30.09.2010].

<sup>102</sup> In articles 11(3) and 18(3a) of the Labour Code. *Kodeks Pracy*, Journal of Laws of 1998, no 21, item 94 with latest amendments.

<sup>103</sup> A. Chrzanowska, K. Wencel, M. Fagasiński, *Poland: A migration Crossroad*, in: *Migrants in Europe as Development Actors. Between hope and vulnerability*, European Social Watch Report 2009, p. 72.

lack of knowledge among journalists on the phenomenon of migration, existing law and the main problems related to migrants and asylum seekers. IPA underlines however, that the media are more and more interested in migration in comparison to the past. The general image of migrants is also more positive<sup>104</sup>.

Migration related issues are not interesting for **politicians**. The experts asked by the IPA often stated that the issue of migration is too difficult for them to include in a general debate. There were some reactions from Parliamentarians in regard to individual cases, however; in general politicians are not active in this field<sup>105</sup>.

Poland does not have a comprehensive migration strategy and policy. According to EAPN, the integration policy of the State exists only in the field of integration of refugees and persons to whom international protection was granted. Migrants are left without any integration programme<sup>106</sup>.

An integration policy for **asylum seekers and refugees**, has been developed, since 1997, when the first act on foreigners came into force. Further instruments were introduced in particular after accession to the European Union. The individual integration programme (IIP) is designated for persons who have been granted international protection (refugee status or subsidiary protection). It lasts for a year and aims at assisting persons granted international protection in finding accommodation, jobs and learning the Polish language. Despite the programme, a person with international protection has full access to the labour market, social assistance and health care, and is not differentiated from Polish citizens in these fields. However, the lack of the financial resources available and the shortage of staff in the institutions responsible for the IIP hinder the process of integration. Some experts underline that after IIP the ends the person usually becomes dependent on social assistance<sup>107</sup>.

As stated, a general policy does not exist for **migrants** legally residing in Poland. In addition, experts underline that the law is often too complicated and interpreted differently. Moreover, there is a lack of knowledge of the law among civil servants, directors of schools and other actors dealing with migrants. In addition, an integration programme for migrants has not been developed. It seems that NGOs took the role of the State in this field, and, mainly due to EU funds, have created several projects aimed at integrating (including legal and social assistance) migrants residing in Poland.

The Government tried to develop some policy towards migrants from the Eastern border. The first step was a regulation of the Minister of Labour and Social Policy, which, as of 2008, permitted employers to employ persons from Ukraine,

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<sup>104</sup> IPA, *Sąsiedzi czy intruzi? op.cit.*, p. 25-27.

<sup>105</sup> *Ibid.*, pp.27-28.

<sup>106</sup> EAPN Poland, *Migracje i imigranci w Polsce – skala, podstawy prawne, polityka*, available at: <http://www.eapn.org.pl/expert/files/Migracje%20i%20imigranci%20w%20Polsce-skala,%20podstawy%20prawne.%20polityka.pdf> [retrieved 30.09.2010].

<sup>107</sup> IPA, *Sąsiedzi czy intruzi? op.cit.*, p. 29.

Belarus, the Russian Federation and Moldova, for short term jobs i.e. for 6 months within 12 months in all economy sectors. A person concerned is issued a statement by the prospective employer and on this basis could apply for a special visa to cross the border and take up the job. In such instances a work permit is not required<sup>108</sup>. Furthermore, in 2009 additional changes were made to the law related to the employment of foreigners, aimed at facilitating a visa procedures and limiting the requirements needed for a work permit to be issued<sup>109</sup>.

Despite the positive developments in the field of employment of foreigners, Poland has not ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

An emerging problem in Poland concerns a situation of **undocumented migrants**. The total number of undocumented migrants in Poland is unknown, and estimates range between 50,000 to 500,000.<sup>110</sup> There is no analysis available on the situation of this group, however, NGOs highlight that they are victims of discrimination and human rights abuses. PFM for example highlights that newly born babies of undocumented migrants are often not issued with a birth certificate, thus they become in fact a non-existing person. This has further implications for the child as she/he faces difficulties in exercising the right to education, access to social security and health care<sup>111</sup>. Undocumented migrants are often victims of abuse from employers, especially because they are afraid of lodging official complaints when their rights are violated.

## VI.iii Criminal justice

### VI.iii.i Racism as a crime

The Penal Code<sup>112</sup> defines a racist crime as a crime against the public order. Under Article 256 the public promotion of fascist or other totalitarian system, hate speech based on nationality, ethnicity, racial or religious differences are prohibited and could be subject to a fine or imprisonment for up to 2 years. Moreover, public insulting a group or a person because of his/her nationality, ethnicity or religious or a lack thereof, could be punished by the deprivation of liberty for up to 3 years (Article 257). A racist crime as defined by Article 119(1) states that a person who indicates or uses violence or makes unlawful threats towards a group of person or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs,

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<sup>108</sup> Par. 1 point 27 of the Regulation of the Minister of Labour and Social Policy on aliens who are allowed to take up jobs without work permit, Journal of Laws of 2006, no 126, item 1116, with latest amendments.

<sup>109</sup> MLSP, *Nowelizacja przepisów dotyczących zatrudniania cudzoziemców*, 10.03.2009, [http://www.mpips.gov.pl/index.php?gid=557&news\\_id=1426](http://www.mpips.gov.pl/index.php?gid=557&news_id=1426) [retrieved 30.09.2010].

<sup>110</sup> For more see: *Undocumented Migration In Poland*, December 2008, <http://irregular-migration.hwwi.net/Poland.5800.0.html> [retrieved 30.09.2010].

<sup>111</sup> Information provided by the PMF.

<sup>112</sup> *Kodeks Karny*, Journal of Laws of 1997, no 88, item 553, with latest amendments.

commits a crime and could be deprived of their liberty from 3 months up to 5 years.

In 2009 some important **judgments** were issued. The Court in Wrocław stated, in a case of a man who assaulted a Roma colleague via instant messenger, that any type of racist publication or posts on the internet, including instant messengers are always public<sup>113</sup>. In Cracow, the Court elaborated that abusive sentences such as “Go back to Palestine, you lousy Jew. Heil Hitler” or “you stinky Jew”, said in a public place, i.e. in a place where a third person could hear them, violates Art. 257 of the Penal Code<sup>114</sup>. In addition, the courts highlighted on several occasions that the social noxiousness of a racist act is severe.<sup>115</sup>

In October the Court in Opole decided to outlaw the National Radical Camp (Obóz Narodowo Radykalny – ONR) on the grounds of propagation of Nazism and racist behaviours of its members. The Court ruled that Article 13 of the Constitution,<sup>116</sup> which prohibits the existence of organisations whose programmes are based upon totalitarianism or racial hatred, also applies to associations and limits the freedom of assembly if an organisation concerned propagates Nazism or its members use racist slogans<sup>117</sup>. However, there is still an inconsistency in interpreting the law, especially if a case concerns specific wording, common expressions or even behaviours<sup>118</sup>. This also concerns the prosecutors and the police.

The TEMIDA **database** is used by the police for the purpose of reporting, among others, racist crimes. There is a special form filled in by a police officer. At the very beginning she/he needs to decide what kind of a crime was committed. If more than one crime is committed, only one is marked. Hence, vandalism or an assault or battery often prevail over the racist crime. Finally, the combined statistics are prepared on the information of the first-listed ground, consequently the racist crimes are missing in the yearly statistics of the police. The experts underline that the TEMIDA system is outdated,<sup>119</sup> so the statistics provided by the police are not precise.

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<sup>113</sup> Never Again Association, *Katalog Wypadków...*, *op.cit.*

<sup>114</sup> *Ibid.*

<sup>115</sup> Information provided by the HFHR.

<sup>116</sup> Political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of Nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited.

<sup>117</sup> Information provided by the HFHR.

<sup>118</sup> OR, *Przestępstwa z nienawiści w Polsce na podstawie badań akt sądowych z lat 2007-2009*, Warsaw 2009, p. 65.

<sup>119</sup> A. Mikulska, *Polskie doświadczenia w zakresie monitorowania zjawisk o charakterze dyskryminacyjnym, ksenofobicznym i rasistowskim*, in: W. Klaus, J. Frelak (eds.), *Metodologia Przygotowania Bazy Danych Do Identyfikacji Zdarzeń O Charakterze Dyskryminacyjnym, Ksenofobicznym Czy Rasistowskim*, Warsaw 2010, p. 47.

The National programme for counteracting racial discrimination, xenophobia and related intolerance described above, requires police officers to be trained on matters related to discrimination and racism. In 2008 and 2009 the NGO Pro Humanum conducted several **trainings** and published a handbook on anti-discrimination for the police<sup>120</sup>. According to the police, in 2009 a seminar on the protection of foreigners and counteracting discrimination in Poland was provided to the officers that work or potentially could deal with asylum seekers.<sup>121</sup> In November 2009, 18 police officers attended a special course on how to train fellow police officers on racism and hate crimes. These officers will provide similar trainings at their respective headquarters<sup>122</sup>. It seems, however, to be not enough, and additional seminars and trainings are needed.

### VI.iii.ii Counter terrorism

Polish law defines terrorism as a “prohibited act subject to the penalty of deprivation of liberty with the upper limit of five years, committed in order to: 1) seriously intimidate many persons; 2) compel the public authority of the Republic of Poland or of the other State or an international organization agency to undertake or abandon specific actions; 3) cause serious disturbance to the constitutional system or the economy of the Republic of Poland, the other State or an international organization – and a threat to commit such an act”<sup>123</sup>. However, there is no particular strategy on counter terrorism.

The Government underlines that “no Polish legal regulation relating to terrorism and anti-terrorist activity has resulted in the derogation or invalidation of any rights safeguarded under the International Covenant of Civil and Political Rights”<sup>124</sup>. Although, there is lack of data available on how counter terrorism measures have affected ethnic and religious minorities and migrants, nevertheless, two cases may indicate some general trends.

The first case concerns a man from Morocco who was living in Poland for 8 years researching for his PhD. Despite that, his residence permit was not prolonged because he had been issued with a negative opinion by the secret service. According to the secret service, he was considered a threat to the public security and eventually, he was deported to his country of origin. The Helsinki Foundation for Human Rights indicated that he was deprived of his right to access the documents and evidences gathered in the administrative procedure on a prolongation of his stay, as the opinion of the secret services was marked as ‘secret’ and on this ground inaccessible for him. As a consequence, he could not

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<sup>120</sup> Information available at: <http://prohumanum.org/?p=180> [retrieved 30.09.2010].

<sup>121</sup> B. Bogacka-Osińska, *Zapobieganie dyskryminacji cudzoziemców w działaniach Policji. Rola Pełnomocników ds. Ochrony Praw Człowieka*, in: *Księga Ubogich a.d. 2009*, Warsaw 2009, pp. 698-699.

<sup>122</sup> Information available at: [http://www.csp.edu.pl/portals/csp/1/803/Nienawisc\\_zrodlem\\_przestepstwa.html](http://www.csp.edu.pl/portals/csp/1/803/Nienawisc_zrodlem_przestepstwa.html) [retrieved 30.09.2010].

<sup>123</sup> Art. 115a par 20 of the Penal Code.

<sup>124</sup> *Replies from the Government of Poland to the list of issues (CCPR/C/POL/Q/6) to be taken up in connection with the consideration of the third periodic report of Poland (CCPR/C/POL/6)*.

present contra-evidence. The case is now pending before the Administrative Court in Warsaw.<sup>125</sup>

The second case shows that the policy of border guards could offend the religious beliefs of the foreigners. A Sikh, citizen of the United Kingdom, who travels frequently within the EU, was asked on several occasions to take of a turban pending the security check at the airport in Warsaw. He argued that, even though the metal detector showed nothing, he was asked to take off the turban. No manual control or a control by a hand held metal detector was undertaken, which is in breach of the EU law<sup>126</sup>. The Border Guards argued that a turban is a massive hat, and explosive material could easily be contained within. They argued that, there is no device available at the Warsaw airport to detect the organic substances, like narcotics and explosive materials, thus the request to take of the turban for the purpose of a manual control was correct<sup>127</sup>. According to HFHR the rule of proportionality was violated, because all available methods of control should have been exercised before a person to be asked to take of a turban<sup>128</sup>.

The two above-motined cases show that the problem of counter terrorism measures is emerging. However, right now, it is too early to assess how it affects ethnic minorities and whether it could lead to discrimination and racism.

### VI.iii.iii Ethnic profiling

There has not been a public debate on the acceptability of the use of specific methods for ethnic profiling in 2009 and the first trimester of 2010. Later in 2010, a discussion took place on the attitude of the law enforcement officers towards migrants, after a black man was shot dead by a police officer on a market square in Warsaw.<sup>129</sup> However, an analysis of that incident is beyond the scope of this report. Nevertheless, the lack of available data and analyses on the ethnic profiling methods and a general policy in this regard, make an assessment of a current situation in 2009 futile.

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<sup>125</sup> HFHR, *Sprawa Chakiba Marakchi – odmowa udzielenia zezwolenia na pobyt*, 22.02.2010, <http://www.hfhrpol.waw.pl/precedens/aktualnosci/sprawa-chakiba-marakchi-odmowa-udzielenia-zezwozenia-na-pobyt.html> [retrieved 30.09.2010].

<sup>126</sup> HFHR, *Letter to the border guards in regard to the case of Mr. Shaminder Puri*, Warsaw 02.06.2010, <http://www.hfhrpol.waw.pl/pliki/ShaminderPuri.pdf> [retrieved 30.09.2010].

<sup>127</sup> *Reply of the border guards to the letter to the HFHR on the case of Mr. Shaminder Puri*, Warsaw 17.06.2010, <http://www.hfhrpol.waw.pl/pliki/2010-06-28-15-04-02-01.pdf> [retrieved 30.09.2010].

<sup>128</sup> HFHR, *Komunikat prasowy Helsińskiej Fundacji Praw Człowieka w sprawie pozwania Straży Granicznej za bezzasadne nakazanie Sikhowi zdjęcia turbanu*, 07.09.2010, <http://www.hfhrpol.waw.pl/Nnews366.html> [retrieved 30.09.2010].

<sup>129</sup> A man from Nigeria, married to Polish citizen, was shot dead in May 2010 in a fight with a police officer pending a police action aimed at checking legality of stay of migrants trading on a market square in Warsaw. The police argues that it was a self defence as the officer was attacked. On the contrary some witnesses underlined that the officers were unprepared for this action and treated Nigerians as potential criminals. This accident is still subject to investigation. For more information see: <http://wyborcza.pl/8,75402,7935297.html> [retrieved 12.10.2010].

#### VI.iv Social inclusion

The National Programme on social protection and social inclusion 2008-2010 was adopted by the Government in December 2008. The document sets down three main priorities. The first concerns the prevention of poverty and social exclusion among children by improving the income of the family, the development of childcare services, ensuring better access to education and supporting children from disadvantaged families. The second priority that was identified was integration through activation. As part of this a social economy and the tools for active inclusion will be developed. Within this priority, the situation of disabled persons shall improve, mainly by facilitating their employment and by creating legislation on preventing discrimination. Finally, the third goal concerns access to high quality social services, in particular, the development of social housing and improving in the education system<sup>130</sup>. Only under the second priority, the National Programmes identifies refugees as a group at risk of social exclusion, however, “[t]he experience of many countries of Western Europe shows that there are no comprehensive measures facilitating the inclusion of this group, which may result in their social exclusion and potential conflicts within the society”<sup>131</sup>.

Poverty and social exclusion are problematic in Poland, however, the knowledge about the phenomenon is rather general, and the identification methods used as well as potential solutions to these problems are poor. According to available data around 5% of Poles live under the guaranteed minimum income<sup>132</sup>. Despite that, Governments have not been able to tackle the problem in a comprehensive way. Furthermore, Poland does not have a strategy on homelessness; however, work on a draft document began in 2008.

Accession to the EU and the increase of migration to Poland, created new challenges. Most of the local authorities do not have any kind of strategy on social inclusion and poverty, thus the social problems of migrants are not highlighted. One of the major challenges, according to the experts, is the inclusion of the local authorities in developing regional and local strategies and to build on these to create counter-poverty activities.<sup>133</sup>

The Special Programme for the Roma Community in Poland seems to be a good example of social inclusion as well as a good example of civic, political and cultural participation of ethnic minorities living in Poland. As a result of a three year pilot programme, in 2004 the Government decided to start a permanent programme aiming at improving the education, social and living conditions, health, employment opportunities, security, culture and civic education of the Roma Community. Each year a sum of 10 000 000 zł is dedicated for the projects

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<sup>130</sup> MLSP, *National Strategy Report On Social Protection And Social Inclusion 2008-2010*, December 2009, available at: <http://www.mpips.gov.pl/index.php?gid=1139> [retrieved 30.09.2010].

<sup>131</sup> J. Auleytner, *Strategia walki z ubóstwem w Polsce? Diagnoza i zadania na lata 2009-2010*, in: *Księga Ubogich* a.d. 2009, *op.cit.*, p. 20.

<sup>132</sup> *Ibid.*, p.21.

<sup>133</sup> *Ibid.*, p. 30.

of all interested legal entities (including NGOs and the local authorities)<sup>134</sup>. In 2009, 380 00 zł of the total sum was spent on the scholarships for Roma children, 50% for projects related to education, and 31% on improving their living conditions and their inclusion in the labour market<sup>135</sup>.

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<sup>134</sup> MoIA, *Informacja dotycząca działań na rzecz Romów, koordynowanych przez MSWiA*, available at: [http://www.mswia.gov.pl/portal/pl/635/8447/Informacja\\_dotyczaca\\_dzialan\\_na\\_rzecz\\_romskiej\\_mniejszosci\\_eticznej\\_w\\_Polsce\\_ko.html](http://www.mswia.gov.pl/portal/pl/635/8447/Informacja_dotyczaca_dzialan_na_rzecz_romskiej_mniejszosci_eticznej_w_Polsce_ko.html) [retrieved 30.09.2010].

<sup>135</sup> MoIA, *Sprawozdanie z realizacji Programu...*, *op.cit.*

## VII. National recommendations

### VII.i General

- Poland should create a system of free legal assistance to victims of racism and discrimination.
- The situation of the Muslim community requires further monitoring.
- A report on ethnic profiling methods and policies should be prepared.
- An annual report on the groups vulnerable to racism and discrimination should be prepared by a body responsible for equal treatment.
- Sports associations should add to their regulations counter-racism and counter-discrimination provisions.
- The Office for Foreigners should undertake an education and information campaign in places where new reception centres for asylum seekers will be opened.
- Racist crimes should be taken more seriously by the police and the prosecutors.
- The authorities should deal more effectively with organisations propagating racism, Nazism and intolerance.
- The authorities should tackle the problem of media broadcasting and the publishing of xenophobic reportages or articles.
- The education system in Poland should meet the needs of pupils from different cultures or from different religions.

### VII.ii Anti discrimination

- Poland should immediately and fully transpose the Race Directive.
- Poland has to create an independent body to tackle the problems of discrimination and racism.
- A horizontal Act on anti-discrimination should be prepared as soon as possible.
- Judges and prosecutors should be provided with trainings and seminars on discrimination and racism related matters.

### VII.iii Migration and integration

- Poland should develop a strategy on migration.
- A special programme on integration of migrants should be created.
- The Polish Government should take necessary actions to ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

## **VII.iv Criminal justice**

### **VII.iv.i Racism as a crime**

- The police should develop a comprehensive system of data collection.
- Courts and prosecutors as well as the police should place special attention on crimes motivated by anti-Semitism.

### **VII.iv.ii Counter terrorism**

- The border guards should develop clear rules in regard to a control at the airports and border crossing points.
- Border guards and police officers should be trained on religious and cultural differences.
- The secret service should respect fundamental rights and freedoms in their actions on counter terrorism.

### **VII.iv.iii Ethnic profiling**

- An independent survey on ethnic profiling practices of the police and law enforcement agencies should be prepared.

## **VII.v Social inclusion**

- The National Actions Plans on social inclusion and eradication of poverty should take into account the situation and needs of migrants.
- Migrants and refugees should be recognised as a group at risk of social exclusion and poverty.
- A system on the collating data on the poverty and social exclusion experienced by migrants and refugees should be developed.

## VIII. Conclusion

Indeed, 2009 and the beginning of 2010 could be characterised as a period of stagnation in improving the situation in the field of anti-discrimination and anti-racism.

The Government did not finalise the consultation process on the Anti-Discrimination Act, and eventually stopped working on the project. As a consequence, only the Labour Code has the relevant provisions related to anti-discrimination.

The chaos in competences of the bodies working on the matters of concern, hindered the improvement of the situation of groups vulnerable to discrimination and racism. The Government Plenipotentiary for Equal Treatment definitely does not meet the conditions of an equal body laid down in Art. 13 of the Race Directive. First of all, the Plenipotentiary is not independent from the influence of the Government. Secondly, the competition with the Department of Women, Family and Counteracting Discrimination of the Ministry of Labour and Social Affairs and the Plenipotentiary's projects related to the rights of child, which should be coordinated by the Ombudsman on Child Rights, made matters even more confusing. Finally, the criticism of various NGOs on the competences of the current Plenipotentiary, particularly regarding her lack of knowledge and lack of interest in some fields of discrimination, made the dialogue between civil society and the Government barely possible.

Racism and discrimination are still important problems for Polish society particularly the verbal and physical attacks on persons of different skin colour as well as racism on the football fields. Poland became a country of destination for migrants from different cultures and of different religions. However, the Government has not done a lot to adjust society to a changing situation.

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## **X. Annex 1: List of abbreviations and terminology**

ALI – Association for Legal Intervention  
EAPN – European Anti-Poverty Network  
FRA – Fundamental Rights Agency  
HFHR – Helsinki Foundation for Human Rights  
HNLAC – Halina Nieć Legal Aid centre  
IPA – Institute of Public Administration  
MLSP – Ministry of Labour and Social Policy  
MoIA – Ministry of Interior and Administration  
NGO – Non-governmental Organisation  
OR – Otwarta Rzeczpospolita  
PMF – Polish Migration Forum  
PSAL – Polish Society on Anti-discrimination Law  
RSD – refugee status determination



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