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Ministry
of Foreign Affairs
Department of the United
Nations and Human Rights

With reference to the call for submissions for a thematic report on **Anti-Muslim hatred / “Islamophobia” and the right to freedom of thought, conscience and religion or belief** to be presented by Special Rapporteur on freedom of religion or belief at the forty-sixth session of the Human Rights Council, Poland would like to present its input below.

I. Elements of questionnaire

1. Hate speech by politicians (point 3 (g) of the questionnaire)

Article 6 of the Resolution of the Lower House (Sejm) of Parliament of the Republic of Poland of 17 July 1998 *Principles of parliamentary ethics* states that the members of that House should avoid behaviour that might damage the good name of the House. He or she should respect the dignity of others.

The Parliamentary Ethics Committee appointed by the Lower House of Parliament may issue a warning, an admonition or reprimand the parliamentarian for violation of the rules of ethics.

The Committee on Regulations, Ethics and Senatorial Affairs has similar powers with regard to senators who behave in a way that does not correspond to the dignity of a senator.

Members of both Houses of Parliament are protected by immunity for the activities falling within the scope of their parliamentary mandate, for which they are responsible only before the relevant House of Parliament. Moreover, any criminal proceedings opened against them before they were elected or instituted during their mandate has to be suspended (but the running of the statute of limitation is suspended too). However, a member of Parliament can agree to be prosecuted or the House to which he or she belongs can waive the immunity.

2. Online hate speech (point 3 (h) of the questionnaire)

The state does not monitor actively the online activity due to respect of freedom of speech, but it reacts accordingly when it is notified of cases of online hate speech.

The judgment of the District Court in Warsaw of 12 June 2019 in case XII K 237/18 can be indicated as an example with regard to incitement to violence.

The court decided that on April 7, 2017 in Warsaw M.L., acting publicly, through the Internet telecommunication network, incited hatred based on national and religious differences and called for the crime of murder and violence against a group of people because of their religious affiliation, by placing on his own profile called "M.L." on Twitter the following entry: "The truck entered the crowd in the centre of Stockholm - cut 10x as many Islamic heads #Eye for an eye #Tooth for a tooth".

The legal basis for conviction was art. 126a of the Penal Code (public promotion of a fascist or other totalitarian regime, public incitement to commit a crime against peace, humanity or a war crime or public praise of such crime that has been committed) in connection with art. 255 § 2 of the Penal Code (public incitement to commit an offence or public praise of an offence that has been committed) in connection with art. 256 § 1 of the Penal Code (public incitement to hatred on national, ethnic, racial or religious basis, or because of the lack of religious denomination) of in connection with art. 11 § 2 of the Penal Code.

Art. 119 of the Penal Code penalises use of violence or unlawful threats against a group of persons or an individual on account of national, ethnic, racial, political or religious affiliation or lack of religious denomination.

Art. 257 of the Penal Code penalises public insult of a group of people or an individual person because of national, ethnic, racial or religious affiliation or because of their lack of religious denomination, or violation, for such reasons, of the physical integrity of another person.

All online service providers are obliged by law to provide – at the request of a prosecutor or a court – evidence concerning data which would allow to identify the user who is suspected of having committed a crime of hate speech.

No specific data is collected with regard to how many of the offences are committed against Muslims.

3. Incitement to hatred or violence (point 3 (i) of the questionnaire)

In order to unify the practice of conducting criminal proceedings for hate crimes on 26 February 2014 The General Prosecutor issued Guidelines on the conduct of proceedings regarding hate crimes.

According to the point 14 of the above-mentioned guidelines, in Poland each hate crime is considered to be a matter of a great importance, which requires informing the superior prosecutor of the opening of preparatory proceeding and all the formal activities and procedural steps taken in the course of such an investigation. Upon receipt of such information, the prosecutor in charge from a higher-level organizational unit assesses, whether there are any grounds for placing the case under official supervision. Cases of this kind are also subject to particularly in-depth internal supervision by the prosecutor. Proceeding that ends with a refusal to initiate or investigation that is discontinued, is periodically examined by senior prosecutors from higher-level units for the correctness of the proceedings and the validity of the substantive decision.

In order to increase the efficiency of proceedings regarding hate crimes based on national, ethnic, racial and religious differences and to protect the rights of victims, a special institutional and organizational framework has been created.

In all district prosecutor's offices, one (or more if necessary) regional unit has been designated to handle this category of cases . Each of these units has appointed two prosecutors to conduct hate crimes cases. As a result, a special group of prosecutors (approximately 100) has been identified from

among all the prosecutors who carry out their professional duties at the regional prosecutor's office level. Also, consultants at the district and circuit prosecutor's office have been appointed. This approach results in the specialisation of the prosecutors and has a positive impact on the coherency of proceedings in the country.

In every hate crime case, prosecutors take steps to explain in detail the circumstances of the events and to determine the motives of the perpetrators. Preventive measures, including isolation measures, may be used to safeguard the proper conduct of proceedings against suspects.

We are convinced that the Polish criminal law fully protects all persons, including Muslims, against hate speech, hate crimes and discrimination and that it is in line with international standards.

The law does not provide for imposition of enhanced penalties for crimes committed with (specifically) anti-Muslim motivation. However, when delivering the penalty, the judge has to take into account, amongst other things, the motivation of the perpetrator and the type and nature of the infringed good.

Poland has no specific regulations concerning the issue of "takfirism". Any offences motivated by "takfirism" would be prosecuted and penalised with use of the general provisions of the Penal Code.

4. Reporting, documenting and remedy (point 3 (k) of the questionnaire)

- i) No specific state mechanism for reporting or recording incidents of anti-Muslim hatred or discrimination exists. The state collects aggregated data on numbers of persons sentenced for every offence and they are available to everyone on the Internet page of the Ministry of Justice.
- ii) No such information is collected.
- iii) Not applicable.

II. Additional input

1. Constitutional and legal framework

The basis for all laws of the Republic of Poland is the inherent and inalienable dignity of the person. According to Article 30 of the Constitution of the Republic of Poland of 2 April 1997 dignity of the person independent of the ethnicity or religion shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities. Fulfilling the above-mentioned duty, the Republic of Poland, as multicultural, multi-ethnic, and multi-confessional state, abides in public life following rules confirmed in the constitution and other acts of law. According to Article 25 paragraph 2 of the Constitution of the Republic of Poland public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life. Guarantees for freedom of faith and religion in relationships between the State and churches and other religious organizations and are set in the Act on guarantees of freedom of faith and religion of 17 May 1989 and defined as:

- separation between the State and churches and other religious organizations;
- freedom of churches and other religious organizations in fulfilling their religious roles;

- equality between churches and other religious organizations, independent of the form of their regulation or legal position.

Making use of their freedom of thought and religion all citizens may in particular:

- create religious communities - churches and other religious organizations created with the aim of religious worship and spreading of the faith. The churches and other religious organizations shall have their structure, doctrine, and religious rituals;
- participate in religious activities and rituals according to rules of their faith, observe religious plights and holidays;
- be or not to be members of churches and other religious organizations;
- raise their children according to their religious beliefs or worldview;
- remain silent on their religious beliefs or worldview;
- cultivate contacts with coreligionists, also take part in the religious organizations of international scope;
- make use of the sources of information on religion;
- create and buy objects necessary for religious worship and rituals and make use of them;
- create, buy and possess objects necessary for observation of religious plights;
- become members of the clergy;
- associate in the lay organizations created to fulfil tasks coming from their religious beliefs or worldview;
- be buried with the observation of rituals coming from their religious beliefs or worldview.

According to Article 32 paragraph 2 of the Constitution of the Republic of Poland, no one shall be discriminated against in political, social, or economic life for any reason whatsoever. Also according to Article 6 of Act on guarantees of freedom of faith and religion of 17 May 1989 no one shall be discriminated against or privileged on the grounds of religion or worldview. No citizen can be compelled to take part or not take part in religious rituals.

The relationship between the State and churches and other religious organizations are based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good. The Government of the Republic of Poland cooperates with churches and other religious organizations in keeping the peace, shaping the public image of the development of the country, and preventing social pathology. Toward the achievement of these goals, there can be created, by mutual consent, permanent forms of cooperation between the State and churches and other religious organizations. Following these principles, the Government of the Republic of Poland maintains a permanent dialogue with representations of churches, religious and church organizations.

Under Polish law, freedom of conscience and religion is a constitutional law (Article 53 of the Constitution of the Republic of Poland). The guarantees of compliance with this law are ensured by the criminalization of such behavior which leads to discrimination against persons on the basis of their denomination or lack of thereof and by the criminalization of behavior which is directed against the public manifestation of religion and which offends religious feelings.

According to Article 194 of the Penal Code (PC): “Whoever restricts a person in their rights due to that person’s religious affiliation or lack of religion, shall be subject to a fine, the penalty of

restriction of liberty or the penalty of deprivation of liberty for up to 2 years.” The offense under art. 194 of the PC is about limiting rights of another person because of their attitude towards religion. Punishable discrimination under art. 194 of the PC may refer to all types of rights, both to those that are constitutional in nature and directly covered by the scope of protection of religious freedom, as well as to any other rights having their source in the current legal order (e.g. the right to conduct business activity, the right to establish and run schools, the right to perform a specific public service). Restrictions may also apply to the rights arising from the employment relationship (amount of remuneration, professional promotion).

The premise of religious affiliation or lack of religion is also present in discriminatory offenses as defined in the Penal Code.

According to Article 119 § 1 of the PC: “Whoever uses violence or an unlawful threat against a group of people or an individual person because of their national, ethnic, racial, political or religious affiliation or because of their lack of religion, shall be subject to the penalty of deprivation of liberty for a term between 3 months and 5 years.” The provision of art. 119 § 1 of the PC was placed in Chapter XVI of the Penal Code, which groups crimes against peace and humanity as well as war crimes. The general object of protection in the case of the prohibited acts specified in art. 119 § 1 of the PC is the peaceful coexistence of members of a pluralistic society. The penalty of deprivation of liberty from 3 months to 5 years is also applicable to anyone who publicly incites to commit an act specified in art. 119 § 1 of the PC or publicly commends the commission of such an act (art.126a of the PC) as well as anyone who, failing to fulfill the obligation of due control, allows the commission of an act specified in art. 119 § 1 of the PC by a person remaining under their effective authority or control (article 126b § 1 of the PC).

According to Article 256 § 1 of the PC: “Whoever publicly promotes a fascist or other totalitarian regime or incites to hatred on the basis of national, ethnic, racial or religious differences or due to lack of religion, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.” The provision of art. 256 § 1 of the PC was placed in Chapter XXXII of the Penal Code, which covers offenses against public order. To the extent that art. 256 of the PC relates to incitement to hatred, its object of protection also covers safety of people who belong to the groups at which such hatred would be directed.

According to Article 257 of the PC: “Whoever publicly insults a group of the population or a particular person because of their national, ethnic, racial or religious affiliation or because of their lack of religion or for such reasons violates the physical integrity of another person, shall be subject to the penalty of deprivation of liberty for up to 3 years.” The provision of art. 257 of the PC was placed in Chapter XXXII of the Penal Code, which covers offenses against public order. The object of protection of art. 257 of the PC is the honor and bodily inviolability of persons belonging to the groups indicated in it.

The Penal Code also penalizes acts consisting with malicious interference with the performance of religious acts (Article 195 § 1 and § 2 of the PC: “Whoever maliciously interferes with the public performance of a religious act by a church or another religious association with a regulated legal status shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. The same penalty shall be imposed on anyone who maliciously interferes with funerals, mourning ceremonies or rituals”), and with offending religious feelings (Article 196 of the PC: “Whoever offends religious feelings of other people by publicly insulting an object of religious

worship or a place intended for the public performance of religious rites, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years”).

Moreover, the provision of Article 255 of the PC introduces criminal liability for public incitement to commit a crime and public praising of committing a crime.

If the motive for committing the crime is the fact that the victim belongs to a specific group (e.g. a religious minority), the perpetrator's motivation is taken into account in the course of conducting the criminal proceedings. Pursuant to the principles of imposing the penalty specified in Article 53 § 2 of the PC, while examining the perpetrator's liability for committing a prohibited act, the motive of their action (that is the intellectual factor constituting the reason for the action, what the perpetrator formulates as the reason for their action), which may be one of the discriminatory causes, is one of the circumstances taken into account by the court when imposing the penalty. Moreover, the perpetrator's motivation is explicitly mentioned in the Penal Code as one of the premises for assessing the criminal nature of a prohibited act in terms of the degree of social harmfulness of the act (Article 115 § 2 of the PC). This circumstance, as an element of the subjective side of the prohibited act, determines the social harmfulness of the act, i.e. its gravity. These legal regulations show that the perpetrator's motivation when fulfilling the features of a prohibited act is taken into account both when determining the gravity of the prohibited act and when imposing the penalty. There is no doubt that the motivation resulting from the perpetrator's prejudices should be taken into account as an aggravating circumstance in imposing the penalty.

2. Prosecutors' and police activities

Applicable legal regulations, in particular the provisions of the Penal Code (including Art. 119 § 1 of the PC, Art. 256 § 1 and 2 of the PC and Art. 257 of the PC), the provisions of the Code of Criminal Procedure and the Public Prosecutor General's Guidelines of February 26, 2014 on conducting proceedings for hate crimes, comprehensively regulate the issues of criminal proceedings for crimes committed to the detriment of a group of people or a particular person because of their national, ethnic, racial, political, religious affiliation or because of their lack of religion. These regulations are also applied in proceedings for crimes against people professing Islam, committed on the grounds of religious beliefs.

In regional and provincial public prosecutor's offices as well as in the Department of Preparatory Proceedings of the National Public Prosecutor's Office, constant monitoring of hate crimes cases is carried out, which consists of systematic collection and analysis of materials from subordinate units, including data on the forms, directions and dynamics of this type of crime, perpetrators and the circumstances conducive to its commission.

As part of the monitoring carried out by the Department of Preparatory Proceedings of the National Public Prosecutor's Office, at the end of each six months, a designated prosecutor prepares a report on the correctness of conducting criminal proceedings in this category of cases. This report, presented to the Public Prosecutor General, is sent to subordinate organizational units of the public prosecutor's office along with substantive recommendations.

The reports collect data on the number of preparatory proceedings conducted in prosecutors' offices, taking into account the criterion of the legal qualification of the offense, the perpetrator's motive and manner of action, as well as data on the way of termination of these proceedings.

The data on proceedings concerning acts motivated by belonging to a national, racial, ethnic and religious group at the disposal of the Department of Preparatory Proceedings show that 112 preparatory proceedings for acts motivated by hatred towards Muslims were conducted in the last full annual statistical period (year 2019), which account for 6.97% of all hate crime cases. Out of the indicated number of cases, 30 were concluded with a court referral: a bill of indictment (27) and a motion for conviction without a hearing (3).

The Ministry of Interior and Administration, in cooperation with the National Police Headquarters, monitors crimes motivated by prejudice (a new form of monitoring system introduced in 2015). The scope of monitoring covers information on preparatory proceedings in cases of hate crimes throughout the country (data provided by the Police). The data is supplemented with information on judgments issued in individual proceedings. This system allows for carrying out various analyzes of the collected information in order to assess the phenomenon of hate crimes in Poland, e.g. in terms of types of motivations underlying these acts, types of acts, places of events, suspects.

The table below presents changes in the last three years in the following areas: all hate crimes, hate crimes motivated by religion, hate crimes against a Muslim. Statistics show that the hate crime situation remains stable. On the other hand, the situation of Muslims is improving, with the number of cases registered falling from year to year.

crimes\year	2017	2018	2019
hate crimes	891	1124	972
religion	158	83	97
Muslim	124	62	33

The Ministry of Interior and Administration coordinates the implementation of the training program for the Police devoted to the issues of hate crimes entitled "Hate Crime Training for Law Enforcement Officers - TAHCLE". As part of the training conducted for police officers throughout the country, the issues of recognizing hate crimes, carrying out appropriate activities in the conduct of investigations, appropriate police responses to such cases and their prevention were taken into account.

The Police Headquarters in cooperation with the Ministry of Interior and Administration organizes workshops entitled "Combating crimes committed for racist and xenophobic reasons". The workshops are addressed to criminal police officers who carry out activities in hate crime cases.

The Criminal Office of the National Police Headquarters is responsible for organizing meetings on combating hate crimes for hate crime coordinators operating in all provincial Police headquarters and Warsaw Police Headquarters, as well as representatives of public institutions and social organizations dealing with the protection of human rights and counteracting hate crimes. During the above-mentioned meetings coordinators participate in lectures and exchange information on hate crimes investigations conducted in provincial police units.

Monitoring of content in the Internet that may have the features of the broadly understood "hate speech" is carried out by units responsible for combating cybercrime at provincial police headquarters and the Warsaw Police Headquarters. In September 2017, a coordinator for combating hate crimes in cyberspace was appointed at the Cyberspace Office.