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Foreword

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 17 December 2004 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

Executive summary

Since the publication of ECRI's second report on Poland, progress has been made in a number of areas. The Framework Convention for the Protection of the National Minorities entered into force in 2001. The Polish authorities have started to raise the awareness of the police and the judiciary to the need to combat racist offences more effectively. They adopted a Programme for the Roma community in Poland in 2003 and a Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance in 2004 in Poland. The labour code now contains extensive provisions prohibiting direct and indirect racial discrimination. The competences of the Government Plenipotentiary for Equal Status of Women and Men have been extended to cover, amongst others, racial discrimination. Some measures have been taken in favour of the cultural and linguistic rights of national and ethnic minorities. The Polish authorities have launched and supported many initiatives to combat antisemitism, particularly in schools.

However, a number of recommendations made in ECRI's second report have not been implemented or have only been partially implemented. The police and the prosecutors do not give sufficient attention to the racist motivation of an offence even though there are reports of racial incidents occurring against members of minority groups such as immigrants and Roma. Cases of racial hatred are rarely investigated and prosecuted while publications containing racist, and particularly antisemitic material are still available on the market. There is still no comprehensive body of civil and administrative legislation prohibiting racial discrimination in all fields of life. There is a need for an immigration policy providing for integration measures. Refugees with a "tolerated status" encounter difficulties concerning the exercise of their social rights. There is evidence of latent social attitudes which result in an underestimation of the seriousness of issues of intolerance and discrimination and of the need for corrective action. Thus, national and ethnic minorities, immigrants, asylum seekers and refugees are sometimes confronted with intolerance by some members of the majority population. ECRI particularly notes the persistence of antisemitism particularly through verbal and written abuse against Jews. Roma often experience difficult living conditions and are faced with discrimination and exclusion.

In this report, ECRI recommends that the Polish authorities take further action in a number of areas. In particular, they should adopt measures to make agencies, particularly those with a responsibility for law enforcement, fully aware of the issues pertaining to racism and racial discrimination so that they can address them when the need arises. ECRI recommends the adoption of a comprehensive body of legislation aimed at combating racial discrimination in all fields of life and the creation of a specialised body entrusted with the task of assisting victims of racism and racial discrimination. ECRI calls for the adoption of an immigration policy which contains integration measures. The authorities should continue and strengthen their efforts to adequately address the needs of all national and ethnic minorities. They should take further measures to combat manifestations of racism and antisemitism in the media, political and other public discourses and daily life. ECRI also recommends a series of measures to address the situation of disadvantage and discrimination faced by the Roma community.

I. FOLLOW-UP TO ECRI'S SECOND REPORT ON POLAND

International legal instruments

1. In its second report, ECRI recommended that Poland ratify the Framework Convention for the Protection of National Minorities. ECRI also recommended that Poland sign and ratify the Revised European Social Charter, the European Charter for Regional or Minority Languages, the European Convention on the Legal Status of Migrant Workers and the Convention on the Participation of Foreigners in Public Life at Local Level.
2. ECRI is pleased to note that Poland ratified the Framework Convention for the Protection of National Minorities on 20 December 2000 and that this Convention entered into force on 1 April 2001. ECRI welcomes Poland's ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 26 September 2003. ECRI is also pleased to note that Poland signed the European Charter for Regional or Minority Languages on 12 May 2003. ECRI notes, however, Poland's declaration of its intention to ratify this Charter within the scope of the Act on National and Ethnic Minorities and Regional Language which was adopted by the Sejm on 6 January 2005 and published in the Journal of Laws No. 17 of 31 January 2005 as item 141¹.
3. Poland has not yet signed the Revised European Social Charter, the European Convention on the Legal Status of Migrant Workers, the European Convention on the Participation of Foreigners in Public Life at Local Level, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families and Protocol No. 12 to the European Convention on Human Rights. Poland has informed ECRI that the signature of this Protocol is under consideration.
4. ECRI is pleased to note that on 21 July 2003, Poland signed the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Poland has further informed ECRI that it will ratify this Protocol after it ratifies the Convention on Cybercrime.

Recommendations:

5. ECRI welcomes the fact that Poland has started the procedure for ratifying the European Charter for Regional or Minority Languages and recommends that it ratify this instrument to its fullest extent.
6. ECRI reiterates its recommendation that Poland ratify the Revised European Social Charter, the European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at Local Level. ECRI further recommends that Poland ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and Protocol No 12 to the European Convention on Human Rights.

¹ See below "Act on National and Ethnic Minorities and Regional Language".

7. ECRI recommends that Poland ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Constitutional provisions and other basic provisions

8. In its second report on Poland, ECRI suggested that possible grounds of discrimination, including those related to race and ethnic origin be included as examples in the non-exhaustive list contained in Article 32 of the Polish Constitution.
9. Article 32 of the Polish Constitution provides that: "1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever". ECRI notes that since its second report, Article 32 of the Constitution has not been amended to include a list of grounds for discrimination such as, *inter alia*, race, religion, ethnic or national origin and colour (the Constitution has not been amended since 1997). ECRI wishes in this regard to bring to the attention of the Polish authorities its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination which recommends that States adopt a Constitution that "enshrine[s] the principle of equal treatment, the commitment of the State to promote equality as well as the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin."

Recommendations:

10. ECRI reiterates its recommendation that Article 32 of the Constitution contain a non-exhaustive list of possible grounds for discrimination, such as race, colour, language, religion, nationality, national or ethnic origin. ECRI recommends in this respect that the Polish authorities draw their inspiration from its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

- Act on National and Ethnic Minorities and Regional Language

11. In its second report, ECRI encouraged the rapid finalisation and adoption of the draft law on national and ethnic minorities.
12. As indicated above, on 6 January 2005, the Act on National and Ethnic Minorities and Regional Language was adopted by the Sejm and was signed by the President on 24 January 2005. This Act, which was first drafted in 1993, covers many areas concerning minorities, such as language, education, culture, specialised bodies and legislation. It thus governs all matters concerning the preservation and development of minorities' cultural identity, regional languages, equality and the competencies of the Government at the central and local levels. Article 2 of the Act mentions 9 national minorities and 4 ethnic minorities². Moreover, Chapter 2 of the Act regulates the use of the languages

² See below "National and ethnic minorities".

spoken by national and ethnic minorities, while Chapter 4 concerns the use of the regional language which, according to Article 19.1.3 of the Act, is the Kashubian language. The Polish authorities have also indicated that Article 6.1 of the Act on National and Ethnic Minorities and Regional Language prohibits discrimination against national and ethnic minorities.

13. ECRI notes the view of some minority representatives that there has been little recent consultation during the drafting of the law and the ensuing debates.
14. In its second report, ECRI mentioned that the Parliamentary Election Law of 28 May 1993 gave minority candidates preferential treatment which exempts the election committees of registered minority organisations from the thresholds based on the nation-wide number of votes cast. The Law thus exempts representatives of minority groups from the 5% minimum threshold of votes which are required for other candidates.
15. Article 2 of the Act on national and ethnic minorities provides a definition of national and ethnic minorities. In that Act, the definition of national minorities differs from that of ethnic minorities in one respect only: unlike ethnic minorities, national minorities are identified with respect to a nation organised in a kin-State. Although there is a difference in the definitions, the rights granted in the Act on minorities are the same for both minority groups. However, ECRI notes that the Parliamentary Election Law grants a preferential threshold for Parliamentary representation to national minorities only. This could have a discriminatory effect on members of ethnic minorities' exercise of their political rights.

Recommendations:

16. ECRI recommends that the definition of national and ethnic minorities contained in the Act on National and Ethnic Minorities and Regional Language be applied to the Parliamentary Election Law in a manner which ensures the full participation of all minority groups in Polish public life.

Criminal law provisions

17. In its second report, ECRI considered that the implementation of legislation covering racial hatred and contempt should be improved. ECRI encouraged Poland to examine the current implementation of legislation more closely, for example, by monitoring the number of cases reported, action taken by the authorities and outcome.
18. Articles 118, 119, 256 and 257 of the Polish Criminal Code provide for the punishment of hate crimes. More specifically, Article 118 punishes murder committed on the grounds of ethnic, racial, political or religious affiliation, whilst Article 119 punishes the use of violence or threats against a person belonging to these groups. Articles 256 and 257 of the Criminal Code respectively punish incitement to racial hatred and the public insult of a group or a person on the basis of their national, ethnic, racial or religious origin.

19. ECRI has been informed that there is no police unit that deals specifically with racist crimes in Poland. However, in 2002, the Director of the Bureau of Investigations established a Taskforce that monitors police methods' compliance with Polish and international laws. ECRI has further been informed that the police have now drafted directives which contain instructions on the manner in which the racist motive behind a crime can be established. ECRI welcomes the Polish authorities' assurances that they are fully aware of the relevance and importance of racially motivated crimes. ECRI also welcomes the Public Prosecutor's decision to establish a system for registering offences which will take into account the reasons given by the victim as to why he has been the victim of a crime. It is expected that once this system is put into practice, the number of cases that fall within the ambit of Articles 118, 119, 256 and 257 of the Criminal Code will rise. However, at the moment, the racist motive of a crime is not taken into account by the police and hate crimes are therefore treated as any other crime. One of the reasons given for this is that police are reluctant to take the racist motive of a crime into account as they consider that they should be blind to a person's race. Therefore, for the time being, the racist motive of a crime can only be ascertained if the perpetrator confesses or the victim indicates so in his/her statement. The Polish authorities have informed ECRI that the National Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance (2004-2009) envisages that an analysis will be conducted of the prosecution practices with regard to organizations espousing anti-Semitic or racist slogans in Poland. The authorities have also indicated that the Programme provides for an ongoing dissemination of statistical data on court proceedings and judgements concerning racial discrimination, xenophobia and related intolerance.
20. Whilst welcoming the above-mentioned developments, ECRI is concerned by reports that those who commit crimes in breach of Articles 118 and 119 of the Criminal Code are rarely prosecuted. ECRI has been informed that since the publication of its second report on Poland in 2000, some 28 to 30 cases have been brought under articles 118, 119, 256 and 257. According to the Ministry of Justice, in 2003, 4 cases were brought to court under article 119-1) (use of violence or threats) of the Criminal Code and 1 case under article 119-2) (incitement to violence and threats). All four cases resulted in convictions and imprisonment for the culprits. ECRI wishes to express concern at reports that some members of visible minority groups are sometimes physically assaulted. Such incidents have, for example occurred in the city of Lodz, where there is a Polish language school attended by foreign students. Moreover, some Warsaw districts are considered to be unsafe for people of Vietnamese origin after dark. Some non-governmental organisations have also reported cases of racially motivated violence in which the police authorities have in their view failed in their duty to protect the victims adequately. They suggest that racially motivated harassment of Jews, Roma and people of African and Asian origin are not properly investigated by law enforcement officials³.
21. As indicated above, Articles 256 and 257 of the Criminal Code prohibit incitement to racial hatred. ECRI notes with concern that as with Articles 118 and 119, crimes that fall within the ambit of articles 256 and 257 are rarely investigated and its perpetrators rarely prosecuted. The reason most often provided by the prosecuting authorities for this failure is that such crimes cause

³ See Amnesty International Report 2002 covering the period from January to December 2001 (EUR 01/003/2002), and Report 2004 covering the period from January to December 2003 (EUR 01/016/2003).

little social harm and that punishing them would be an infringement of the right to freedom of speech and expression. For further information on the implementation of these articles, see the section below entitled “The need to fight antisemitism in Poland”.

Recommendations:

22. ECRI recommends that police and judicial authorities fully investigate and prosecute racially motivated crimes by acknowledging and taking into account the racist element of a crime. ECRI strongly encourages the Polish authorities to enact legislation that would render the racist motivation of a crime an aggravating circumstance, as recommended in paragraph 21 of ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
23. In its second report, ECRI recommended that Poland take all possible measures to ensure that police, prosecuting authorities and judges be made fully aware of the importance of the fight against racial hatred, and be instructed to take the necessary measures to ensure the full implementation of the existing legislation.
24. ECRI was informed that in mid-October 2004, the police academy held workshops on the consolidation and development of anti-discrimination policies for police officers working in the field. ECRI welcomes this initiative and the fact that by the end of 2004, a police training procedure will be put in place to cover the entire police force in 2005. Further, following a decision by the Chief of Police in July 2004, issues pertaining to racial violence and human trafficking will be covered in the police training curricula. Within the Government Pilot Programme for the Roma Community in the Malopolska Province for the Years 2001-2003, which was implemented by the Polish authorities from 2001 to 2003, the police authorities were provided with information on this community in order to acquire better knowledge and understanding of the issues facing them and improve the assistance they provided to them⁴. The Polish authorities have moreover indicated that a three-day training course for police officers, which was aimed at countering discrimination due to race, ethnic origin, religion, age and sexual orientation was held in April 2004 in the framework of the Phare 2002 project entitled “Strengthening Anti-Discrimination Policy” that was implemented by the Secretariat of the Government Plenipotentiary for the Equal Status of Men and Women. The authorities have further indicated that the National Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance envisages that training programmes for police officers (as well as for border guards, customs officers and prison guards) will be expanded to include issues relating to countering racism, antisemitism and xenophobia. In that programme, information material aimed at promoting anti-racist attitudes will be prepared for, amongst others, police officers.
25. Since ECRI’s last report on Poland, some measures have been taken by the Polish authorities to train members of the judiciary. A program of cyclical training for judges has been created and two cycles of training sessions for

⁴ For further information on the Malopolska programme, see below “The situation of the Roma community in Poland”.

judges and prosecutors were supposed to take place in 2004. However, due to lack of funds, only one of these training sessions was held for appellate district judges. They were trained on the issue of racist publications and the difficulties inherent in interpreting such material. Moreover, a 3-day training seminar on discrimination in employment was held. The authorities have also indicated that a 3-day course for judges and lawyers on countering discrimination due to race, ethnic origin, religion, age and sexual orientation was held in 2004 in the context of the Phare project which is mentioned in paragraph 24 above. Whilst ECRI welcomes and encourages these initiatives, it is concerned that training seminars on discrimination which are planned for 2005 will be dependent on the availability of funds and that their future cannot therefore be guaranteed.

Recommendations:

26. ECRI recommends that the Polish authorities take a more pro-active approach in providing adequate training to judges, prosecutors and the police. It recommends, in this regard, that the authorities make them fully aware of the issues pertaining to racism and racial discrimination so that they can better address them when the need arises. ECRI thus strongly encourages the Polish authorities to provide sufficient funds for such endeavours. ECRI further recommends that the Polish authorities work in close cooperation with non-governmental organisations and the Ombudsman on this issue.
27. In its second report, ECRI strongly urged the Polish authorities to take firm measures against the publication and dissemination of racist material and considered that Poland should strengthen its efforts to combat racist organisations.
28. As indicated above, Articles 256 and 257 of the Criminal Code punish incitement to racial hatred and the act of inciting someone to make racist threats. ECRI notes with concern that Articles 256 and 257 are still not being adequately implemented, particularly with regard to cases of antisemitism. The Polish authorities have however informed ECRI that the National Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance provides for an analysis of racist and xenophobic publications that are disseminated in Poland. According to the authorities, the findings of the analysis will serve as a basis for guidelines concerning practical measures for enforcing the ban on the promotion of ideologies propagating racial hatred in the mass media (including the electronic media). For further information concerning this issue, see the section below entitled "The need to fight antisemitism in Poland".
29. Article 13 of the Polish Constitution prohibits "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". ECRI notes with concern that despite the existence of actively racist organisations in Poland and numerous calls by NGOs for Government action against these parties, no legal or other measures have been taken to curb or ban their activities.

Recommendations:

30. ECRI recommends that the Polish authorities implement the existing legislation in order to monitor and combat racist organisations. In this regard, ECRI wishes to bring to the attention of the Polish authorities article 18 g) of General Policy Recommendation No 7 which calls on Member States to penalise the creation or the leadership of a group which promotes racism, support for such a group and participation in its activities with the intention of contributing to racially motivated offences. ECRI urges the Polish authorities to take all adequate measures against these types of organisations and fully implement Article 13 of the Constitution in order to protect those who may be victimized by their actions as well as society at large.

Civil and administrative law provisions

31. In its second report, ECRI encouraged the Polish authorities to introduce a comprehensive body of civil and administrative legislation prohibiting racism and discrimination in all fields of life.
32. ECRI is pleased to note that since its second report, Poland has striven, as part of its accession to the European Union, to incorporate anti-discrimination provisions in its legislation along the lines of Directives 2000/43/EC and 2000/78/EC. In this respect, the new Labour Code which entered into force in January 2004 defines and prohibits direct and indirect discrimination in all its forms (Articles 13 {3a} 3) and 4)) and obliges employers to fight discrimination in employment (article 9). Article 18 {3b} 3) of this Code further provides for temporary positive measures aimed at redressing past discrimination. Furthermore, the Act on the Promotion of Employment and Labour Market Institutions also prohibits discrimination on racial, ethnic and national grounds. However, ECRI notes with concern that the 1998 Law on the Social Security System prohibits discrimination only on the grounds of gender, marital status and family status. Moreover, the Labour Code lists six categories of persons considered to be vulnerable in the employment sector, but does not mention Roma or other ethnic minority groups.

Recommendations:

33. ECRI encourages the Polish authorities in their efforts to legislate against discrimination. It recommends, however, that the Polish authorities adopt a comprehensive body of legislation which contains clear and consistent anti-discrimination provisions in areas such as education, employment, housing, access to goods and services and healthcare. In this regard, ECRI calls on the Polish authorities to draw their inspiration from its General Policy Recommendation No 7.
34. ECRI notes that the provisions in the Labour Code on the issue of sharing the burden of proof between the employee and the employer in discrimination cases are unclear. The Labour Code provides that in contentious cases, the burden of proof with respect to failure to take action shall rest on the employer.

ECRI therefore reminds the Polish authorities that this measure should apply to all cases of discrimination and draws their attention to paragraph 11 of its General Policy Recommendation No 7 which states that “the law should provide that, if persons who consider themselves wronged because of a discriminatory act establish before a court or any other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no discrimination”.

Recommendations:

35. ECRI recommends that the Polish authorities clearly define the concept of sharing the burden of proof in racial discrimination cases so that no confusion arises as to its scope and applicability when such cases are brought to court.

36. ECRI has been informed that between January 2002 and the end of June 2004, 184 discrimination cases were examined by the Department of Common Courts at the Ministry of Justice and that none of them were specifically brought on the grounds of racial or ethnic discrimination. ECRI considers that the above-mentioned lacunae in the Polish legislation partly explain this lack of jurisprudence on issues pertaining to racial discrimination. ECRI is, however, also of the view that the lack of understanding in Poland of the concept of discrimination also lies at the root of the problem. ECRI is particularly concerned that there is a general feeling among some officials that discrimination does not exist because it is not perceived as being a widespread problem and that there is therefore no need to legislate against it. ECRI is pleased to note that according to the Polish authorities, in January 2005, information material on the legal regulations for combating discrimination and on the premises of the National Programme for Countering Discrimination, Xenophobia and Related Intolerance (2004-2009) were circulated in State and self-Government institutions, NGOs and social partners. ECRI considers, however, that the issue at hand is not the number of cases brought to court, but the importance of the cases for the present and the future.

Recommendations:

37. ECRI recommends that the Polish authorities take all the necessary measures to inform Polish society as well as State institutions such as the judiciary about racial discrimination and its negative effects on those who encounter it. In this regard, ECRI recommends that the Polish authorities work closely with civil society, the Ombudsman and the Plenipotentiary for Equal Status of Women and Men⁵. ECRI also recommends that members of minority groups be fully included in any such information activities.

⁵ See below, “Specialised bodies and other institutions”.

Specialised bodies and other institutions

38. In its second report, ECRI encouraged the Commissioner for the Protection of Civil Rights, (hereafter: the Ombudsman) to continue to give high priority to issues of racism and intolerance, and welcomed the creation of a specific section of the Ombudsman's office to this end.
39. ECRI notes with satisfaction that the Ombudsman's office has continued its action in the field of combating racism and racial discrimination. In its 2003 Annual Report, the Ombudsman's office had underlined the need to protect the rights of national and ethnic minorities, and particularly of Roma. Recently, it also dealt with a case of discrimination on the grounds of nationality in an instance of a refusal to recognise the equivalence of a foreign doctor's diploma without any objective and reasonable justification. The Ombudsman's office stresses that it receives only a very small number of complaints dealing directly with racial discrimination and racism⁶. However, in its 2003 report, the Ombudsman indicates that the low number of complaints does not reflect the frequency of the problems of national and ethnic minorities in Poland because only the persons who are aware of the existence of such a mechanism come forward to ask for assistance. On 1 January 2001, an Independent Department for the Protection of Foreigners and National Minorities Rights was established whose competencies include the issues connected with the protection of the rights of Polish citizens belonging to national and ethnic minorities, in particular, connected with the realisation of the equal treatment and non-discrimination principle and with the right of national and ethnic minorities to maintain and develop their native language, customs and traditions and to develop their own culture. The Polish authorities have indicated that a Group for Monitoring Racism and Xenophobia was established within the Department of Religious Denominations and National and Ethnic Minorities of the Ministry of Internal Affairs and Administration.
40. In its second report, ECRI reiterated its encouragement for the development of an independent specialised body to combat racism and intolerance. ECRI notes that the Government Plenipotentiary for Equal Status of Women and Men (hereafter: the Plenipotentiary) was established by the Regulation of the Council of Ministers in November 2001. The authorities have indicated that, in order to implement the Directives 2000/43/EC, 2000/73/EC and 2000/78/EC of the European Union as well as ECRI's recommendations, the Regulation of the Council of Ministers of 25 June 2002 has temporarily extended the duties of the Plenipotentiary by promoting, initiating, implementing or co-ordinating the implementation of governmental programmes aimed at counteracting discrimination based on race, ethnic origin, religion or belief, age and sexual orientation. Until an office in charge of counteracting discrimination is established, the duties of the Plenipotentiary are as follows: spreading knowledge about discrimination and its manifestations as well as about the methods and strategies of counteracting discrimination; co-operating with appropriate units of public administration, non-governmental organisations and institutions for carrying out educational programmes related to counteracting discrimination; initiating, evaluating and drafting legal acts and other

⁶ The statistics indicate that only 0.1% of the complaints received in 2003 were related to the protection of the rights of non-citizens and national minorities. See Summary Information from the Commissioner for Civil Rights Protection along with the conclusions regarding the activity of the office in 2003, Office of the Commissioner for Civil Rights Protection, Warsaw, 2004.

governmental documents aimed at counteracting discrimination; inspiring and supporting the activities of groups, organisations and circles to combat discrimination.

41. ECRI has been informed of a number of legislative initiatives, discussions with NGOs, programmes and seminars on the means to fight discrimination and particularly racial discrimination, in which the Office of the Plenipotentiary has already taken part. This body was also in charge of drafting the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance⁷. ECRI welcomes the extension of the competencies of the Plenipotentiary to the field of combating racial discrimination and the action already taken. However, it notes that, according to some sources, this extension was not accompanied by a strengthening of the human and financial resources of the Office of the Plenipotentiary. It is important that the capacity of the Plenipotentiary's Office be strong enough to enhance still further its work on race discrimination and to be able to meet the concerns expressed by NGOs that its primary focus has been on gender.
42. It was also the duty of the Government Plenipotentiary for Equal Status of Women and Men to prepare a preliminary draft law setting up a central government administration organ for equal status between women and men, and on counteracting discrimination on grounds of race, ethnic origin, religion and beliefs, age and sexual orientation. The Plenipotentiary elaborated the premises of this law. The Polish authorities have indicated that at its 24 February 2004 session, the Council of Ministers recognized the establishment of a Government institution for equal status of women and men and on counteracting discrimination as a target solution. However, due to the programme of reduction of expenditure in the Government Administration, actions pertaining to the equal status of women and men and anti-discrimination policy will be implemented in accordance with the present principles and competences – until the projected office is established. It is not clear to ECRI whether the two bodies that are foreseen will be independent as recommended in ECRI's General Policy Recommendation N° 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. ECRI notes that the Council of Europe Commissioner for Human Rights, in his Opinion on the creation of a national body for counteracting discrimination in Poland, expressed concern that the proposed body would lack independence⁸. NGOs have also spoken out about their concern in this regard.

Recommendations:

43. ECRI strongly encourages the Polish authorities to set up in the near future an independent body specialised in and focussing on combating racism and racial discrimination, with due regard to ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, and General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. The authorities should include within the competence of such a body: assistance to victims;

⁷ See below "National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance".

⁸ Opinion of the Commissioner for Human Rights on the creation of a national body for counteracting discrimination in Poland, CommDH(2004)7, § 13 and 14.

investigative powers; the right to initiate and to participate in court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment.

44. ECRI particularly emphasises the need to guarantee to this body complete independence, as well as the legal capacities and the human and financial resources necessary for it to provide the requisite assistance to the victims of racism and racial discrimination. In its view, a body situated within a Government Department cannot realistically be regarded as independent of Government. It is important to provide for branches throughout Poland so as to make this body accessible to all potential victims.

Reception and status of non-citizens

- *Immigration*

45. In its second report, given the new patterns of migration which have resulted in an increase in immigration into Poland, ECRI encouraged the authorities to ensure that adequate structures and policies were in place at all levels to cope with the new situation and to ensure the successful integration of immigrants into Polish society.
46. ECRI notes with interest that on 13 June 2003, Poland adopted the Law on Aliens regulating the entry and stay of non-citizens in the territory of Poland. This law introduced the first regularisation programme for migrants in an irregular situation who had been residing in Poland for several years. The number of immigrants living in Poland is less than one per cent of the total population. ECRI notes that the authorities are implementing an integration programme for refugees but that nothing similar is currently envisaged by the authorities as regards immigrants⁹. According to some sources, such an integration programme should be organised as soon as possible for the immigrants who already live in the country. The case of the Vietnamese community in Poland has been given as an example of the need for integration measures. The Vietnamese community constitutes around 30 000 persons, divided into two categories. Around 8 000 of them arrived a long time ago in Poland and do not appear to encounter problems of integration into Polish society. However, a second group of around 22 000 persons has arrived only in the 1990's in Poland and this group is faced with problems linked to the lack of command of Polish and a difficult economic situation.
47. ECRI also notes with concern that, according to some allegations, immigrants may face difficulties in gaining full acceptance into society. They are sometimes treated in a condescending manner by some officials and faced with intolerant attitudes, including cases of racial violence, on the part of members of the majority population.
48. ECRI is concerned that to date, there is still no comprehensive and targeted integration strategy ensuring that immigrants fully become part of Polish society. A frequently cited problem is that many non-citizens do not possess an adequate command of the Polish language. No integration measures are

⁹ See below, "Asylum seekers and refugees".

provided for members of such groups who would like to learn the Polish language. ECRI considers that the planning of an immigration policy which would include integration programmes for newcomers as well as for the immigrants already in the country would benefit society as a whole. This is particularly important in the light of the recent accession of Poland to the European Union and the resulting opening up of the Polish labour market to European Union citizens.

Recommendations:

49. ECRI considers that the Polish authorities should strengthen their efforts in order to adopt a general integration policy covering the whole territory of Poland and concerning not only recognised refugees but also other non-citizens such as economic immigrants or persons “with tolerated status”¹⁰. ECRI reiterates that integration measures could include, inter alia, language teaching, advice and assistance in receiving social and welfare benefits, training and other measures to facilitate integration into the employment market, and relevant training for officials coming into contact with immigrants in their work.
50. ECRI feels that more attention needs to be paid to non-citizens as members of Polish society rather than just as economic entities, and that measures should be taken which reflect this approach, such as, for example, awareness-raising measures within society in general, of the contribution made by non-citizens to Polish culture and society and of the need to combat intolerant attitudes.
51. In its second report, ECRI stressed that immigrants in an illegal situation who are victims of trafficking should be treated with due respect to fundamental human rights and provided with adequate access to the necessary services.
52. Immigrants in an illegal situation are kept in detention centres set up for this purpose. According to the new legislation of 2003, the maximum length of stay permitted in these centres is 12 months. Persons in the detention centre may claim asylum. ECRI notes with concern that a recent study conducted by NGOs on the situation of non-citizens in deportation centres has revealed that non-citizens are placed in the deportation centres for the maximum period determined by the law. ECRI also notes that, in some centres, the living conditions are not satisfactory. Another problem is the lack of human and financial means in many centres. The most important problem identified by the NGOs is that persons kept in detention do not always have satisfactory access to information in a language they understand concerning their rights, including the right to apply for asylum and to contact the United Nations Commissioner for Refugees (UNHCR) and NGOs working for asylum seekers and refugees.

Recommendations:

53. ECRI recommends that the Polish authorities closely monitor the use of detention with respect to non-citizens and take steps to ensure that it is used only as a last resort.

¹⁰ See below, “Asylum seekers and refugees”.

54. ECRI recommends that the Polish authorities take all necessary measures to improve the living conditions in all detention centres and to ensure that all non-citizens kept in detention have an appropriate access in a language that they understand to information concerning their rights and particularly the right to ask for asylum.

- ***Asylum seekers and refugees***

55. In its second report on Poland, ECRI encouraged the Polish authorities to ensure that the legal provision stating that all persons seeking refugee status have to be informed of their rights in their own language should be implemented in practice throughout the asylum procedure. It also encouraged the Polish authorities to ensure that border guards and persons responsible for dealing with asylum requests receive comprehensive and on-going training and awareness-raising concerning the problems of racism and racial discrimination.
56. Since the entry into force in September 2003 of the Law on Granting Protection to Aliens on the Territory of the Republic of Poland, four types of protection status can be granted to non-citizens. The refugee status corresponds to the status provided for in the 1951 Geneva Convention relating to the status of Refugees. The new law introduced the “tolerated status”, a subsidiary protection granted to non-citizens who ask for asylum when their right to life, to freedom or personal safety, to be free from forced labour, torture or inhumane or degrading treatment or punishment or to a fair trial is under threat. Such protection can also be granted when the deportation of a non-citizen is impossible. The third status is the temporary protection and may be granted to a group of persons who enter Poland in great numbers after an armed conflict or serious violations of human rights. The last status, called asylum status, is a form of protection granted to non-citizens in the interest of the Polish state. Until now, there has been no case of temporary protection or asylum status granted. ECRI notes that the new law, and particularly the introduction of a tolerated status, was generally welcomed as an improvement for the protection of asylum seekers and refugees in Poland. Progress has also been noted in the field of legal and social protection for unaccompanied minors and in the length of the asylum procedure.
57. Since 2000, the number of people seeking asylum in Poland has been increasing. In 2003, out of the 6 918 persons who made a request for asylum, 5 581 were Russian citizens, mainly of Chechen origin. 4 295 of the persons who made an asylum request in 2003 have withdrawn their applications, 187 of them were granted refugee status, and 20 others were granted tolerated status. This means that altogether 1648 requests were rejected. The authorities have indicated that until October 2004, 636 persons, mainly Russian citizens of Chechen origin, were granted tolerated status. NGOs have indicated that the authorities tend to grant more tolerated status than refugee status, although many persons, and particularly those of Chechen origin, would qualify for the latter.
58. ECRI welcomes the fact that the 12 March 2004 Law on Social Assistance provides for a programme of individual integration for persons with refugee status. The programme includes Polish language courses and social assistance which is tailor-made to suit the needs of each individual. Such programmes will start as soon as the implementing regulations are adopted.

59. The persons who receive tolerated status enjoy basically the same rights as those with refugee status, including the right to work, social assistance and residence permit. However, they do not have the possibility to move outside Poland or to benefit from an integration programme. Moreover, the United Nations Commissioner for Refugees (UNHCR) and NGOs have pointed out that persons with tolerated status face several problems in practice. Such problems include the lack of integration measures such as Polish language courses or assistance in finding a job or accommodation after leaving the reception centre. It seems that such problems are also linked to the lack of staff, notably the lack of social workers in reception centres, dealing with asylum seekers. The difficulties encountered by these persons apparently prevent them from effectively exercising their rights, and particularly their social rights. For instance, the Law on Granting Protection to Aliens on the Territory of the Republic of Poland provides that persons with tolerated status should benefit from unemployment allowance but this right cannot be exercised in practice because of the recent entry into force of a labour law that states the contrary. The authorities are conscious of this problem and ECRI understands that they are amending the legislation in order to ensure that persons with tolerated status effectively benefit from unemployment allowance.
60. As concerns asylum seekers in general, according to the UNHCR and NGOs, access to social and legal assistance, to interpretation and translation of procedural documents remains an issue of concern¹¹. According to the same sources, the access to education of children living in the reception centres is not satisfactory as many children do not attend school at all or very rarely during their stay which sometimes lasts several months. ECRI notes with interest that there are training courses on human rights provided for the staff working directly with asylum seekers and refugees. As previously mentioned, the Polish authorities have indicated in this regard that the National Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance (2004-2009) envisages the inclusion of issues pertaining to racism and xenophobia in the training programme for border guards. Furthermore, according to the Polish authorities, in 2002-2003, pilot programmes were conducted in regions with the highest number of refugees. Workshops were held for social workers, civil servants, school boards, employment officers and NGOs who work with refugees. However, NGOs have underlined the need for intensification of such training courses.
61. ECRI notes that, according to a recent survey conducted at the request of the UNHCR, 70% of Poles consider that Poland should accept refugees. However, this poll also reveals that a high percentage of Poles shares the opinion that an inflow of refugees contributes to a growth of unemployment (73%) or an increase in the number of criminal offences and ethnic conflicts (60%). 40% of Poles describe refugees as economic migrants, leaving their country to find better living conditions and not as persons fleeing from persecution. Although the poll concludes that general attitudes towards refugees and asylum seekers have improved, it also shows that there are still some prejudices and negative stereotypes which should be eliminated to ensure that these persons do not suffer from any form of racism or intolerance.

¹¹ Concerning access to information about the right to seek asylum for the persons kept into detention, see above "Immigration".

Recommendations:

62. ECRI urges the Polish authorities to swiftly take steps to resolve the problems encountered by persons under the “tolerated status” due to the difficulty in effectively exercising their rights, and particularly their social rights. It encourages the authorities to give assistance to these persons in finding a job and accommodation, primarily when they leave the reception centre. The Polish authorities should commit all the necessary human and financial resources to overcome the existing deficiencies in this field.
63. ECRI recommends that the Polish authorities take all appropriate measures to improve the access to education of asylum seekers staying in reception centre. It stresses the need to give all non-citizens, and particularly those kept in detention, access to information on their rights in a language that they understand.
64. ECRI recommends that the Polish authorities continue and strengthen their efforts to provide all staff who come into contact with asylum seekers and refugees with training in human rights and the need to fight against racism and racial discrimination.
65. ECRI encourages the Polish authorities to take all appropriate measures to combat any prejudice or negative stereotypes concerning non-citizens by strengthening awareness-raising among the general public of the situation of refugees and asylum-seekers.
66. ECRI recommends that the Polish authorities examine the conclusions and recommendations of the UNHCR Office in Poland and of human rights NGOs working in this field as concerns the need to change legislation and practice pertaining to asylum-seekers, refugees and persons with “tolerated status” in order to improve their general situation.

- Trafficking in human beings

67. ECRI notes that Poland is a country of origin, destination and, increasingly, of transit for the traffic of human beings. This problem concerns mainly the trafficking of women for the purpose of sexual exploitation. According to the Polish authorities, the level of social awareness in the area of human trafficking is relatively low and prejudice and negative stereotypes which hold the victim responsible for the entire situation persist. They stress that the situation of non-citizens who come mainly from Bulgaria, Russia, Belarus, Ukraine, Romania and Moldova and are victims of trafficking is especially difficult¹². According to some sources, one of the reasons for this is that they do not yet benefit from sufficient protection allowing them for instance, once they are identified, to remain on Polish territory for their safety or for humanitarian reasons. ECRI notes that the authorities have already taken a series of measures to combat trafficking for the purpose of sexual exploitation including training courses for

¹² See 5th Periodical Report of the Republic of Poland on the Implementation of the Provisions of the International Covenant on Civil and Political Rights for the Period from January 1995 until 1 October 2003, § 154, CCPR/C/POL/2004/5, 26 January 2004.

lecturers of police academies concerning the prevention and elimination of this phenomenon and the approval by the Council of Ministers on 16 September 2003 of a draft National Programme for the Elimination and Prevention of Trafficking in Human Beings.

Recommendations:

68. ECRI recommends that additional measures be taken to counter the problem of trafficking in human beings, particularly by carrying out preventive and awareness-raising measures about this serious problem which are aimed at all segments of the population concerned. In particular, ECRI encourages the Polish authorities to protect the victims of trafficking in human beings notably by providing them with assistance and ensuring their safety. It also recommends that they effectively penalize the traffickers.

Vulnerable groups

- *The national and ethnic minorities*¹³

69. In its second report, ECRI asked that national minorities be better recognised and given a more active part in Polish society. The Polish authorities have informed ECRI that the following groups of Polish citizens are considered as national minorities in Poland: Belarussians, Czechs, Lithuanians, Germans, Armenians, Russians, Slovaks, Ukrainians, and Jews. The following other groups are considered as ethnic minorities: Karaims, Lemks, Roma and Tatars. The Kashubian language is considered by the authorities as a regional language. The Act on National and Ethnic Minorities and Regional Language reproduces this list of minorities and indicates the difference between national and ethnic minorities¹⁴.
70. Each national and ethnic minority has its own interests and needs in Poland. For example, the Roma community is, generally, in a much more difficult situation than the other minorities¹⁵. ECRI notes, however, that there are some areas of concern common to all national and ethnic minorities. Representatives of these minorities have conveyed to ECRI their view that the national and local authorities should pay more attention to their interests. They also consider that the majority population shows little interest in the situation of minorities and that the general public has limited knowledge of the culture of these minorities. Representatives of national and ethnic minorities, namely Germans, Lithuanians, Russians, and Ukrainians, have indicated that minorities sometimes encounter cases of intolerance for example against pupils belonging to a minority in schools or through the publication of racist press articles. Representatives of national minorities have also stressed that they wish to obtain more support from the Polish authorities in a number of fields. They particularly mentioned the need for assistance in protecting their cultural and linguistic – and sometimes religious - heritage. Many of them - and particularly the Lithuanians, the Ukrainians, the Lemks and the Armenians - have asked for a better support in the area of schools for minorities. The Polish authorities

¹³ Concerning the Roma and the Jewish communities, see below, "Specific issues".

¹⁴ See above, "Act on National and Ethnic Minorities and Regional Language".

¹⁵ See below, "The situation of the Roma community in Poland".

have indicated in this regard that they have taken some measures to preserve and develop the cultural heritage of national and ethnic minorities such as, amongst others, subsidising journals, cultural events and the publication of schoolbooks for members of minority groups.

71. There are also some problems specific to each minority, which remain to be solved. Some of these minorities are scattered throughout the country, which means that it is more difficult for them to organise cultural and educational activities and also to be represented in public life, particularly within the national Parliament. This is the case of the Ukrainians and Lemks, as a result of the 1947 “Wisla” mass deportation operation. On this matter, the Polish authorities have indicated that work is in progress at the moment on a draft law on compensation for real estate and certain movables taken over by the State. According to the Polish authorities, until this law is adopted, a decision on the basis of which property was taken may only be annulled or changed if the original decision was incompatible with the law at the time. Should such a finding be made, the property is either returned or compensation is paid to the claimant. More than fifty years after this operation, issues of compensation and the restitution of property for Ukrainians and Lemks are still not resolved. The Germans wish to see their problems concerning monuments and language issues solved as soon as possible in the strict respect of the bilateral agreements existing between Germany and Poland. The Polish authorities have informed ECRI that throughout 2003, in the voivodship of Opole province, talks were held and monuments visited to ascertain whether they met the legal requirements. According to the Polish authorities, the team set up to negotiate this issue made recommendations, and most of these recommendations were put into effect. Finally, ECRI notes that certain representatives of national and ethnic minorities have expressed the feeling that minorities are not treated by the State authorities on an equal footing. There are allegations that some encounter more difficulties than others in such matters as obtaining financial support or the right to open a cultural centre, for instance.
72. The Polish authorities have indicated that they take the requests of national and ethnic minorities seriously into account and that, in the former absence of a law on national and ethnic minorities and regional languages, many regulations and other measures have been implemented to protect the cultural identity and the interests of each minority. Among other measures taken in this respect, ECRI notes the existence of a “Team for national minorities” which is an advisory body to the Prime Minister. This Team, composed of Government officials and representatives of national minorities, comprises two working groups, one for education and another, created in 2002, for issues of interest to the Roma community. The working group on education has prepared a “Strategy for the development of education of the Lithuanian minority in Poland”. The Ministry of Culture is apparently also very active in providing assistance to national and ethnic minorities’ associations. Finally, there is for each voivodship (administrative district) a Plenipotentiary for national and ethnic minorities.

Recommendations:

73. ECRI recommends that the Polish authorities continue and step up their efforts to meet the requirements of the national and ethnic minorities of Poland in all fields and particularly as regards cultural and education issues.
74. ECRI strongly recommends the Polish authorities to take measures in order to raise the majority population's awareness of the cultural identity of national and ethnic minorities. They should also ensure protection against acts of intolerance or, in cases where such acts have happened, they should ensure that they are efficiently sanctioned and that the victims obtain adequate remedy.

- The Roma community

75. Concerning the Roma community, see below, "Specific issues: the situation of the Roma community in Poland".

- The Jewish community

76. Concerning the Jewish community, see below, "Specific issues: the need to fight antisemitism in Poland".

Media

77. In its second report, ECRI encouraged the introduction of self-regulatory mechanisms to combat manifestations of racism in the media. ECRI notes that racist statements are still published in the media and particularly statements with an antisemitic connotation¹⁶. National and ethnic minorities and non-citizens are also sometimes the targets of intolerance by some media. ECRI is particularly concerned at the publication of blatantly racist articles in tabloid newspapers.
78. ECRI notes with satisfaction that measures have been taken by the Polish authorities to increase the presence in and the access to media of the national and ethnic minorities, even though the representatives of such minorities have argued that further progress needs to be made in this respect. ECRI also welcomes the fact that the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance includes projects such as research on manifestations of racism in the media and the development and implementation of a system which will ensure that legal provisions prohibiting racism and discrimination in the media will be enforced. The fact that the *Principles of journalistic ethics of the Polish television* include the prohibition of discrimination by the journalists on grounds such as race, religion or different culture is also to be welcomed. The Ethics Commission of the Polish Television is entrusted with the task of ensuring that those Principles are respected by journalists. This body has the power to receive complaints regarding the breaches of the Principles. Its decisions are transmitted to the supervisor of the journalist concerned, who may take disciplinary measures against him/her.

¹⁶ See also below "The need to fight antisemitism in Poland".

ECRI hopes that similar mechanisms of self-regulation already exist or will soon be set up for all other media, including those which use new technologies.

Recommendations:

79. ECRI recommends that the Polish authorities alert media professionals and their organisations of the dangers of racism and intolerance. If racist articles have been published, it strongly encourages the Polish authorities to make every effort to prosecute and punish the culprits.

Climate of opinion

80. ECRI deals with the issue of climate of opinion in different sections of this report. See, among others, “Criminal law provisions”, “Asylum seekers and refugees”, “Immigration”, “Vulnerable groups”, “The need to fight antisemitism in Poland” and “The situation of the Roma community in Poland”.

Conduct of law enforcement officials

81. In its second report, ECRI recommended that the Polish authorities investigate allegations of discrimination and racism by members of the police force with a view to taking disciplinary action against them. ECRI also emphasised the importance of improving relations between the police and minority groups, by for instance appointing mediators belonging to such groups in the police.
82. The Polish authorities have informed ECRI that they have received no complaints concerning racially motivated misconduct by the law enforcement officials. However, ECRI is concerned that, according to the *European Roma Rights Centre*, Roma are sometimes subject to police abuse and harassment. The Polish authorities have indicated that it could be that members of minority groups may be reluctant to report racially motivated crimes committed by non-state persons to the police for several reasons, including a lack of confidence in the institution. ECRI considers that the authorities should examine closely to what extent any lack of confidence in the police also plays a role in the absence of any complaint by members of minority groups concerning police misconduct against them. ECRI notes with interest that the police is currently adopting measures aimed at increasing the confidence of all victims in the institution in order to encourage them to report offences committed against them. When there is an allegation disciplinary or penal procedures may be initiated. For the moment, no independent body has been established to investigate police misbehaviour such as ECRI had recommended. The police have not taken any specific measures to recruit members of minority groups and have no information on the ethnic background of its staff. The Polish authorities have however indicated that the Chief Commander of the Police has appointed Plenipotentiaries of Province Police Commanders for Human Rights in order to protect human rights and combat discrimination. They will, amongst others, monitor all instances of racism, including charges of discriminatory and racist conduct against police officers.

Recommendations:

83. ECRI recommends that additional measures be taken to ensure that the police do not engage in any reprehensible behaviour against members of minority groups. ECRI emphasises the importance of setting up an independent investigative body which would be empowered to investigate allegations of police misconduct and, where necessary, to ensure that the suspects are brought to justice.
84. ECRI recommends that the possible racist dimension of offences be taken into account as part of the police's drive to increase the victims' confidence in the institution.
85. ECRI recommends that steps be taken to recruit more members of minority groups in the police force. ECRI further reiterates its recommendation that mediators belonging to minority groups be appointed in the police.

Monitoring the situation

86. The National Population and Housing Census took place in 2002. This census included a question relating to nationality (thereby meaning national origin rather than citizenship) and another to the language spoken at home. 96.74 % of the population declared they were Polish, 1.23 % that they belonged to another nationality and 2.03 % did not answer this question. 97.8 % declared that they spoke Polish at home and 96.5 % that they only speak Polish. ECRI notes that most representatives of national and ethnic minorities consider that the census does not reflect the real number of members of minorities. It also notes with concern reports of irregularities in the organisation of the census. It appears that some interviewers did not fully take into account the spontaneous answer given by interviewees as regards nationality, for instance by omitting to ask the question and by systematically writing down "Polish", or by correcting the answer given afterwards. The Polish authorities have informed ECRI on this matter that according to the Central Statistical Office, incidents of irregularities were sporadic and met with immediate reaction on the part of the Census supervisors.
87. ECRI notes that 173 200 persons stated that their nationality was "Silesian" and that this figure is higher than that of the German minority, which is the largest national minority in Poland according to the census (147 094). The Polish authorities have indicated that they do not consider that Silesians belong to a national or an ethnic minority. Irrespective of the issue of the status given to the persons identifying themselves as Silesians, ECRI considers that the Polish authorities should ensure that they duly take into account the interests and concerns of the Silesians when dealing with issues such as combating racism and racial discrimination.
88. ECRI is concerned at the lack of reliable information on the situation of the different minority groups living in Poland. It notes that, with the exception of the national census and some monitoring of racially motivated crimes¹⁷, no specific

¹⁷ See above "criminal law provisions".

measures have been taken to improve the situation in this respect. One of the reasons put forward by the Polish authorities to justify their failure to take action is the need to avoid discriminating against people on the grounds of their ethnic origin. ECRI considers, however, that it is essential that statistics be given and broken down according to ethnic origin in order to establish the extent to which discrimination occurs in fields such as employment and education. ECRI thus welcomes the fact that according to the Polish authorities, the National Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance (2004-2009) envisages the elaboration and implementation of a system for collecting and analysing socio-demographic data for the purpose of monitoring instances of racism, racial discrimination and xenophobia.

Recommendations:

89. ECRI strongly encourages the Polish authorities, taking into account the experience of the 2002 census, to consider ways of establishing a coherent and comprehensive data collection system in order to assess the situation of the various minority groups living in Poland and the scale of manifestations of racism and racial discrimination. Such a data collection system should comply with national law and European regulations and recommendations on data protection and the protection of privacy, as stated in ECRI General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. The Polish authorities should ensure that data collection is carried out with full respect to the anonymity and dignity of the people questioned and in accordance with the principle of full consent. Furthermore, the data collection system on racism and racial discrimination should take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination. Generally speaking, gathering data providing a breakdown on the basis of ethnic origin would make it easier to identify areas of life where direct or indirect racial discrimination may exist and to work out the best ways of countering this type of discrimination.

National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance

90. The National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance (2004-2009) is the consequence of the implementation by Poland of the recommendations set out in the final documents of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, convened by the United Nations General Assembly and held in Durban from 31 August to 7 September 2001.
91. The Programme was drafted after consultation with numerous public bodies and NGOs. It is displayed on the website of the Government Plenipotentiary with an encouragement addressed to interested parties to send in their remarks and comments. It was also submitted to independent experts for assessment of both its substance and strategic approach. The Council of Ministers adopted the Programme on 18 May 2004. The aims of the programme are to combat xenophobia, racism and antisemitism and to spread the broad culture of tolerance further within Polish society. Its strategy provides for taking steps to enhance the public awareness of the problems of xenophobia and racism, including antisemitism, encouraging research in this field. The results of the

Programme will be assessed regularly in order to adapt it to the real needs and problems existing in the country. The authorities have indicated that the Programme is being implemented by the competent ministers, central organs of Government Administration, the Human Rights Ombudsman, public broadcasters and organs of Government Administration at the province level in close collaboration with units of territorial self-government and NGOs. ECRI notes that two seminars have already been held for the implementation of this programme, one on the media and their role in combating discrimination (26th July 2004), and another for NGOs specializing in combating racism and related forms of intolerance (28th-29th June 2004). Further seminars and conferences are planned for the purpose of enhancing public awareness as concerns countering racial discrimination, xenophobia and related intolerance.

Recommendations:

92. ECRI strongly encourages the intention of the Polish authorities to give a high priority to the implementation of the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance. It stresses the importance of ensuring that such action is adequately resourced and is taken in coordination with all relevant public institutions, at the local and national levels, which should all be closely involved in carrying out the objectives of the Programme. This Programme should also be an opportunity to reinforce co-operation with NGOs working in the field of human rights and combating racism and with organisations representing the interested parties, such as national and ethnic minorities, non-citizens and any other minority groups vulnerable to racism and related intolerance.

II. SPECIFIC ISSUES

The need to fight antisemitism in Poland

- *The extent of antisemitism in Poland*

93. The Jewish community in Poland is small; it is composed of - depending on the estimations - 5 000 to 10 000 members, dispersed throughout the Polish territory¹⁸. Before the second world war, the Polish Jews were much more numerous, but as a result of the Holocaust a considerable number of Jews perished, then due to the persecution under the Communist regime, the majority of the survivors left Poland. While the Jewish community is relatively small, ECRI expresses its deep concern about information according to which antisemitism persists as an important problem in Polish society. This situation is sometimes described as paradoxical, as if there was “an antisemitism without Jews” or a “virtual antisemitism” in Poland.
94. ECRI has already addressed the problem of antisemitism in its second report on Poland, where it recommended that the authorities take all necessary measures to fight against this phenomenon. ECRI regrets that, according to

¹⁸In the 2002 census, the number of persons who declared themselves as of Jewish ethnic origin is 1 055 and the Statistics Annual Yearbook indicated a number of 1 222 persons belonging to the Union of the Jewish Communities. However, it is generally accepted that these figures do not reflect the real number of Jews currently living in Poland. Concerning the 2002 census, see also above under “Monitoring the situation”.

NGOs and representatives of the Jewish community, the measures taken until now by the Polish authorities have not yet been sufficient to significantly reduce the number of manifestations of antisemitism. During the last few years, antisemitism has sporadically manifested itself through physical attacks against Jews, notably by Skinheads, vandalism against Synagogues or Jewish schools or desecration of Jewish cemeteries and tombstones. However, the number of these acts of violence against members of the Jewish community and their property is very small compared to other forms of antisemitism such as written and verbal abuses against Jews.

95. ECRI notes with deep concern that hate-speech with antisemitic connotations is considered to be commonplace in Poland by many NGOs and representatives of the Jewish community. In particular, they stress the important number of antisemitic publications, including periodicals, which are published in Poland and sold freely on the market and in bookstores. Such publications include the *Protocol of the Elders of Zion* and books overtly denying the Holocaust. The *Antik* bookstore, located in the basement of a church in Warsaw, is well known as a source of hard-line antisemitic books and magazines. There are also some media broadcasting antisemitic statements such as *Radio Maryja*, founded by a Catholic priest and well known for its intolerant and particularly antisemitic programmes despite several reprimands from the Catholic Church. Other Catholic priests have been criticised for holding antisemitic discourse in their sermons, as in the case of the priest of a church in Gdansk considered by various sources as responsible for repeated antisemitic acts and statements. Antisemitic expressions are also uttered during public manifestations such as football matches, whereby the word “Jews” is used as an insult against the opposite supporters, or during “white power” music concerts. Internet is also used as a tool for spreading antisemitism throughout Poland, from websites based either in Poland or in other countries. ECRI is also concerned at information according to which politicians of extreme-right or nationalistic parties such as the League for Polish Families (LPR, *Liga Polskich Rodzin*) or the National Rebirth of Poland (NOP, *Narodowe Odrodzenie Polski*) often resort to antisemitic speech. ECRI finds it even more disturbing to learn that politicians of the mainstream parties have also made some xenophobic and antisemitic statements, exploiting the feelings of some members of the Polish population in order to attract votes during electoral campaigns.

96. Although in some cases action has been taken against antisemitic acts, ECRI underlines that it is particularly worrying to note that cases like that of *Radio Maryja* or the *Antik* bookstore are repeatedly reported to having been openly inciting to antisemitism for several years, without it being possible to put a stop to this reprehensible behaviour. This persistence would seem to indicate a lack of effective implementation of measures intended to prohibit antisemitic acts and statements.

- ***The need for a more efficient implementation of the prohibition of antisemitic hate-speech***

97. Articles 256 and 257 of the Penal Code are clearly aimed at, amongst others, countering antisemitism¹⁹. Article 256 penalises anyone who promotes a fascist or other totalitarian system of state or incites to hatred on the basis of national, ethnic, racial or religious differences or for reason of lack of any religious

¹⁹ Concerning legal provisions prohibiting racially motivated acts, see also above “Criminal law provisions”.

denomination. Article 257 penalises anyone who publicly insults a group within the population or a particular person because of his national, ethnic, racial or religious differences or because of his lack of any religious denomination or who, for the same reasons, breaches the personal integrity of another individual. The Penal Code provides for a fine, restriction of liberty or imprisonment of up to two years for acts which fall within the ambit of Article 256 and up to three years' imprisonment for breaching Article 257. Such provisions would be perfectly appropriate for prosecuting most of the instances of antisemitism described above. Therefore, the problem does not stem from a lack of criminal provisions which prohibit antisemitic statements but from the unsatisfactory implementation of such provisions. As an example, a report on the antisemitic material sold by the *Antik* bookstore was brought to the attention of the Prosecutor in 2002. In July 2003, the case was discontinued on the grounds that no antisemitism could be found in the submitted material. This decision was then upheld by the District Court. However, the Polish authorities have informed ECRI that the National Prosecutor's Office has instructed the District Prosecutor in Warsaw to supplement his preliminary investigation with a view to possibly resuming the investigation. More generally, the implementation of Articles 256 and 257 suffers from a lack of awareness of the police and the prosecutors about what is to be considered as antisemitic and moreover about the social significance of antisemitic statements. According to various sources, such attitudes have led to a situation whereby people feel discouraged to bring a case before the court as they tend to believe that such a move would only be a waste of time and money. The authorities have only recently started collecting data on the implementation of criminal provisions prohibiting racist acts but ECRI notes that in 2003, the police made fourteen indictments and the courts delivered a guilty verdict in six cases on the grounds of Article 256. In the same year, as regards Article 257, there were seventeen indictments by the police and eleven convictions by the courts.

98. The prosecutors frequently use their right not to prosecute or to discontinue a case on the grounds that the antisemitic expression at stake has such a low social harm that it does not necessitate any further action. Another argument put forward to justify the lack of prosecutions is freedom of expression, implying that people should be free to say and write anything they wish. However, while understanding the concerns over the risk of infringing upon the right to freedom of expression, ECRI recalls that the European Court of Human Rights has admitted in successive judgements that, under certain conditions, State authorities may restrict the exercise of this freedom by taking criminal sanctions against the authors of racist and antisemitic acts²⁰.
99. The Polish authorities have indicated to ECRI that they are conscious of the need to raise the awareness of the police and particularly of the prosecutors of the importance of taking efficient measures for this purpose. They have already taken a series of measures in order to strengthen the criminal prohibition of antisemitism²¹. For instance, they are in the process of amending the criminal code in order to add a provision to Article 256, which would allow for

²⁰ See also ECRI's General Policy Recommendation N° 7 on national legislation to combat racism and racial discrimination, Paragraph 3 : "The constitution should provide that the exercise of freedom of expression, assembly and association may be restricted with a view to combating racism. Any such restrictions should be in conformity with the European Convention on Human Rights". See also the Explanatory memorandum to Paragraph 3 and Paragraph 18 of General Policy Recommendation N° 7 which indicates the racist acts that the national legislation should penalise.

²¹ See also above, "Criminal law provisions".

criminalisation of the production, acquisition, storage or dissemination of racist and antisemitic material. More significantly, since May 2004, training seminars have been organised by the Public Prosecutor office for prosecutors and judges in order to draw their attention to the need to prosecute and condemn the authors of antisemitic acts. The Ombudsman has taken an active part in these seminars. ECRI also notes that, as a consequence of this positive step, the case against the owner of the *Antik* bookstore has recently been reopened and a prosecution is underway on the grounds of incitement to racial hatred. At this stage, the final decision on this case has not yet been taken.

Recommendations:

100. ECRI strongly encourages the Polish authorities to give high priority to the fight against antisemitism, taking all necessary measures to combat all of its manifestations, regardless of their origin. It draws attention to its General Policy Recommendation N° 9 on the fight against antisemitism, which gives a series of guidelines in this field.
101. ECRI urges the Polish authorities to take the appropriate measures to ensure that legislation aimed at preventing and sanctioning antisemitism is effectively implemented by all persons involved at all levels of the criminal justice system: police, prosecutors, judges. ECRI recommends offering targeted training to these persons with a view to increasing knowledge about antisemitic crimes and how such acts can be effectively prosecuted.
102. ECRI encourages the Polish authorities to co-operate with and support the activities of non-governmental organisations, which play an important role in fighting antisemitism, promoting the appreciation of diversity, and developing dialogue and common anti-racist actions between different cultural, ethnic and religious communities.

- *The need to take further measures to raise the awareness of the general public of the prohibition of antisemitism*

103. As far as the general public is concerned, a degree of antisemitic sentiment appears to exist predominantly in a latent form, sometimes which sometimes surfaces in daily life in the form of remarks made in private or in public. It seems that the public is not indifferent to antisemitic remarks in the press, or to other types of public discourse. While some members of the public react well by condemning such remarks, others are influenced by them. It is noted that people tend to express their antisemitic sentiments during debates on particular subjects. Such subjects include the massacre of Jews in the town of Jedwabne, in north-eastern Poland during the Second World War, or the return of Jewish religious property. It should be underlined that the debate on the Middle East is also becoming an opportunity for people to express antisemitism. NGOs have drawn ECRI's attention to the risk of a rapid deterioration of the climate of opinion if nothing is done to combat manifestations of antisemitism in Poland more effectively. Some events have already led to expressions of intolerance to a degree which seems to indicate that, in the event of some form of social crisis (for example, if the country's economic situation was to worsen), antisemitic acts could increase, along with acts of intolerance towards other

vulnerable minority groups such as immigrants, asylum-seekers and refugees, and national and ethnic minorities.

104. ECRI notes with satisfaction that steps are increasingly being taken by the Polish authorities, some NGOs and the Jewish community to fight against all forms of antisemitism. These steps include educative means and awareness-raising among the general public. Among all the measures taken, those applying in the field of education have particularly drawn ECRI's attention. For instance, there is an annual competition organised in schools on the history and culture of the Polish Jewish community. A textbook on teaching the Holocaust has been published to serve as a tool for teachers wishing to address this subject with their pupils. Training seminars and study visits have been organised by the State in co-operation with the Jewish community to inform teachers about Jewish history. ECRI considers that another effective step to combat antisemitism lies in the clear and firm stance sometimes taken by the authorities and some opinion leaders against antisemitic acts. In this respect, ECRI welcomes the fact that on 10 July 2001, the Polish President publicly apologised for the 1941 Jedwabne massacre of Jews. Every year, young Poles (700 persons in 2003) take an active part in the "March of the Living", an event honouring the memory of the Holocaust victims. ECRI also notes that the Catholic Church in Poland has publicly condemned the antisemitic discourse of some Catholic priests; however, criticisms have been expressed about the minimal impact of such stances. Some NGOs have asked that the Catholic Church take more dissuasive measures against their priests who do not respect the general condemnation of antisemitic discourse.

Recommendations:

105. ECRI recommends to the Polish authorities to encourage politicians and opinion leaders, including religious leaders, to take a firm public stand against antisemitism, regularly speaking out against its various manifestations, including all its contemporary forms, and making it clear that antisemitism will not be tolerated.
106. ECRI recommends that the Polish authorities encourage debate within the media professions on their role in fighting antisemitism, and on the particular responsibility of media professionals to report on all events in a manner which avoids perpetuating prejudices.
107. ECRI recommends to the Polish authorities to strengthen their efforts in introducing anti-racist education into the school curriculum at all levels and in an integrated manner, including content that builds awareness about antisemitism, its occurrences through centuries and the importance of combating its various manifestations, ensuring that teachers are provided with the necessary training. The authorities should promote learning about Jewish history as well as about the positive contribution of Jewish persons, communities and culture to Polish society.

The situation of the Roma community in Poland

108. The Roma, which number between 15 000 to 50 000 persons, are considered to be an ethnic minority in Poland²². They live in small communities scattered around Poland. ECRI addressed the situation of the Roma community in its second report on Poland by underlining the persisting prejudices, the acts of racially motivated violence, the discrimination and the social exclusion which it faces. ECRI urged the Polish authorities to pay immediate attention to all these problems.

- **Racial discrimination and racially motivated violence against Roma**

109. ECRI is concerned that, since the adoption of its second report, there has not been much change in the situation of the Roma community in Poland. Despite the adoption of two governmental programmes in favour of Roma (see below), the majority of the Roma community still suffer from exclusion and face difficult living conditions throughout the country. The authorities have themselves stressed, on several occasions the fact that Roma experience poverty, unemployment, poor accommodation and health conditions and a general low level of education. The Polish authorities consider that the problems of the Roma are not as such the result of the prejudices, negative stereotypes or discrimination that they face. However, ECRI notes that there is documented information indicating the direct and indirect discrimination which the Roma experience in their daily lives plays an important role in their difficult situation. This information concerns discrimination in areas such as employment, housing, education, access to public services and health care²³.

110. ECRI notes that the authorities themselves have given information which would appear to be consistent with allegations of discrimination. For example, one of the reasons given by the authorities and many other sources to explain the high unemployment rate of Roma is – other than the low level of qualification of the majority of them - the fact that employers are reluctant to hire members of the Roma community²⁴.

111. ECRI expresses its deep concern at NGOs' reports according to which Roma are victims of racially motivated violence, particularly from skinheads. The Polish authorities acknowledge that Roma are sometimes the victims of violence. However, according to certain sources, they do not sufficiently take into account the racist motivation of this violence²⁵. For instance, the police often qualify it as mere hooliganism. Roma are also victims of hostility from members of the majority population, on account of their ethnic origin.

²² In the 2002 census, the number of persons who declared themselves to be of Roma ethnic origin is 12 731. However, it is generally accepted that this figure does not reflect the real number of Roma currently living in Poland. Concerning the 2002 census, see also above "Monitoring the situation".

²³ See, in particular, European Roma Rights Center, *The Limits of Solidarity, Roma in Poland after 1989*, Country Report Series N° 11, September 2002, 218 p.

²⁴ ECRI recalls that racial discrimination occurs when a differential treatment is based, inter alia, on ethnic origin and when it has no objective and reasonable justification. For instance, an employer who systematically rejects all applications from persons of Roma origin would breach the principle of non-discrimination. This would also be the case of a restaurant owner who would refuse entrance to his or her restaurant to Roma on the grounds of their ethnic origin. In such cases, the discriminator should be sanctioned and the victim should obtain adequate remedies. See also above "Criminal law provision" and "civil and administrative law provision".

²⁵ See also above "Criminal law provisions".

Concerning the conflicts which occur sometimes between Roma and their neighbours from the majority population, these are described by the authorities as having no link to prejudices and negative stereotypes. However, NGOs and representatives of the Roma community take a different view.

Recommendations:

112. ECRI strongly recommends that the Polish authorities study the impact that discrimination may have on the current difficulties of the Roma population living in Poland. Such monitoring should take into account the view of the Roma themselves on the role that discrimination plays in their problems. ECRI further reiterates the necessity of adopting a comprehensive body of legislation which prohibits discrimination in all fields of life²⁶.
113. ECRI recommends the Polish authorities that they complement measures taken in favour of the Roma community by organising a system of legal assistance, by which Roma could file complaints before the relevant judicial authorities when they encounter racial discrimination or racially motivated violence. Such assistance should be easily accessible, provided at local level and be free for those who cannot afford paying a legal counsellor. It could be provided by a body specialised in combating racism and racial discrimination, which would have local offices throughout the country and particularly in the regions where Roma live.
114. ECRI recommends that the Polish authorities disseminate, through school curricula, other forms of education, as well as through the media, elements of Roma culture, traditions and history, and also the “added value” of tolerance in a given society. It further encourages them to co-operate with and support NGOs which promote Roma culture and work in the field of combating discrimination against Roma.

- Access to education of Roma children

115. ECRI notes that there are still some separated classes, attended only by Roma, in certain primary schools. These classes were created mainly to improve the Roma pupils’ skills in Polish. However, this experience was criticised by several sources, for creating a form of segregated education which was detrimental to Roma pupils’ education and integration. The Polish authorities have indicated that they are aware of the need to close down the few remaining Roma classes and to find other ways to reach equal opportunities for Roma children in education. However, this issue apparently comes under the competence of each local authority and the Polish authorities have indicated that it is impossible to adopt a decree at national level requesting the closing down of these classes. The Ministry of Education therefore considers that the present period is one of transition and that all the remaining separated classes for Roma will disappear soon. ECRI notes with interest that the Polish authorities have now adopted a new approach, based on integrated classes with some additional remedial courses for the Roma pupils who need them. ECRI welcomes the clear stand taken by the Ministry of Education in favour of finding solutions to ensure equal opportunities for Roma children in access to

²⁶ See above, “civil and administrative law provisions”.

education, particularly in the framework of the Government Pilot Programme for the Roma Community in the Malopolska Province and the Programme for the Roma Community in Poland. Such solutions concern the hiring of Roma assistants in schools, scholarships for Roma students, additional classes in Polish language and pre-schooling for Roma children. Moreover, the Polish authorities have informed ECRI that one of the main aims of the Programme for the Roma Community in Poland is to improve school attendance and performance among Roma children and youth and to help them continue their studies into higher education.

Recommendations:

116. ECRI strongly encourages the Polish authorities to maintain and strengthen their efforts to ensure that Roma children have equal opportunities in access to education and particularly to continue on to higher levels of education. In this respect, ECRI urges the Polish authorities to ensure that all separated Roma classes are shut down as soon as possible.

- Government Pilot Programme for the Roma Community in the Malopolska Province (2001-2003)

117. The authorities have recently taken measures to help socially disadvantaged Roma who are in a difficult situation. The first step in this direction was the Government Pilot Programme for the Roma Community in the Malopolska Province (2001-2003). This programme, which was adopted in February 2001, is intended for the Roma who live in this region, and particularly for the group of Bergitka Roma, who have been described by the authorities as the poorest group of Roma living in Poland. The programme was set up in consultation with Roma representatives who have expressed their satisfaction with its content. The aim of this programme was to “ensure full participation of Roma who live in the Malopolska region in the life of a civil society, particularly in fields such as education, employment, health, hygiene, accommodation conditions and skills for functioning in a civil society”.

118. The results of the pilot programme are not yet fully known but Roma representatives and the local and governmental authorities have already expressed their satisfaction with the programme in the fields of education, healthcare, culture and to some extent, housing²⁷. The most visible achievement has been the increase in attendance of primary school by Roma children. This is probably due to the fact that up of a system of assistance for Roma children by, *inter alia*, giving them remedial classes, has been set up. Some Roma were also hired as school assistants, to mediate between staff and Roma parents. This has helped, among others, to considerably reduce the truancy level among Roma children.

119. While welcoming the positive results of the pilot programme, ECRI is aware that a three-year programme could never satisfactorily solve all the problems encountered by the Roma in the region of Malopolska, and that a lot remains to be done. Roma representatives have also expressed the view that, if the programme was in itself a good programme and that it was drafted in

²⁷ Concerning the police, see above, “Criminal law provisions”.

consultation with them, its implementation was far less satisfactory. They referred to the lack of funds earmarked for the implementation of the programme, the alleged embezzlement of funds, the absence of real progress in many fields covered by the programme such as secondary school attendance and access to higher education, employment and adult education. The Polish authorities have indicated in this regard that the Ministry of Internal Affairs and Administration has not received any reports of alleged embezzlement of funds earmarked for the Malopolska pilot programme. The Roma representatives felt that they should have been consulted more and given a more active part in the implementation of the programme by the local authorities. They have also stressed that the reasons why the pilot programme was created not sufficiently explained to the local population. The Polish authorities have however indicated to ECRI that there were both direct and indirect consultations with the Roma community, as well as within the Group for National Minorities and its Sub-group for Roma Affairs, during the implementation of the programme. The local media have at time depicted it as an unjustified preferential treatment for Roma, despite the fact that the rest of the population would need equivalent or other measures to solve their problems. ECRI notes that the programme did not acknowledge discrimination as a possible factor preventing Roma from fully exercising their rights. However, it considers that mentioning discrimination in this respect would have made it easier to understand for others that the pilot programme was justified by the need to compensate for disadvantages that the Roma suffer because of their ethnic origin.

120. On 1 January 2004, the Polish authorities launched a long-term national Programme for the Roma Community in Poland, which had been adopted by the Council of Ministers on 19 August 2003. This programme is inspired, to some extent, by the Malopolska experience. It was drafted in consultation with Roma representatives. The aims of the programme are: to improve living and health conditions, to reduce unemployment, to ensure their security and prevent racist crimes, to develop their culture and maintain their ethnic identity. The programme also aims to promote among the majority population Roma history, culture and tradition of the in the majority population. Priority has been placed on education of Roma children. The Ministry of Interior and Administration is in charge of coordinating the Programme. ECRI welcomes the adoption of this Programme, which covers the entire territory of Poland and is aimed at addressing the main concerns of the Roma community.

Recommendations:

121. While welcoming the two programmes which are directed towards the Roma community, ECRI strongly recommends that the Polish authorities continue and strengthen their efforts by adopting an integrated strategy in order to find solutions to the problems encountered by the Roma. ECRI stresses that the Polish authorities should envisage a multidisciplinary and multi-agency approach in order to obtain the best results possible. Adequate funds should be allocated to any project aimed at assisting the Roma and the latter should always be consulted during the elaboration of the project.
122. ECRI stresses the importance of raising awareness among those responsible for implementing policies, and among society at large. The reasons behind the measures taken and of the need to include Poland's Roma minority as an equal and integrated part of society should be adequately explained to them. ECRI

also stresses the need to evaluate the results of the new measures on a regular basis, and closely involve the Roma community itself in its further development, fine-tuning and implementation.

123. ECRI wishes to draw to the attention of the Polish authorities its General Policy Recommendation N° 3 on combating racism and intolerance against Roma/Gypsies where it asks government to develop institutional arrangements to promote an active role and participation of Roma communities in the decision-making process, through national, regional and local consultative mechanisms, with priority placed on the idea of partnership on an equal footing and to take specific measures to encourage the training of Roma, to ensure full knowledge and implementation of their rights and of the functioning of the legal system.

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APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Poland

ECRI wishes to point out that the analysis contained in its third report on Poland, is dated 17 December 2004, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Poland was subject to a confidential dialogue with the Polish authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Polish authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

“Observations provided by the Polish authorities concerning ECRI’s third report on Poland

Cf. para. 15.

The suggestion that the Election Law discriminates against ethnic minorities must be firmly rejected. Members of ethnic minorities have the same electoral rights as all other Polish citizens. The Election Law does contain provisions that are preferential toward national minorities. The Election Law deals with political rights, and it is a political element - the possibility of identifying with a nation organized within its own state - that distinguishes a national minority from an ethnic minority

Cf. para. 20

It should be underlined that NGOs frequently refer to cases of racial violence solely because the victim is of other than Polish origin.

Cf. para. 37

In order to implement the recommendations made in ECRI’s second report, the Polish authorities circulated in January 2005 among state and self-government institutions, NGOs and social partners information materials on the legal regulations designed to counter racial discrimination, and on the premises of the National Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance (2004-2009).

Cf. para. 39

It should be noted that the Ministry of Internal Affairs and Administration is negotiating an agreement with the non-governmental organisation - Union of Citizen Advice Bureaux concerning the provisions of counselling for victims of racial and ethnic discrimination. Moreover, the Act on national and ethnic minorities and regional language of 6 January 2005 stipulates that the Minister responsible for religious confessions and national and ethnic minorities is to promote the implementation of the rights and needs of national and ethnic minorities. The measures of promotion should include implementation of programmes aimed at equal treatment of persons regardless their ethnic origin and initiation of research into the situation of minorities, including problems of discrimination, its manifestations, as well as methods and strategies of countering it.

Cf. para. 42

The information contained in this paragraph stating that “the Council of Europe Commissioner for Human Rights...expressed concern that the proposed body would lack independence” is groundless. It should be noted that in course of the legislation process aimed at establishment of an office for equal status of women and men the authorities have taken into account ECRI’s General Policy Recommendation No. 2, in particular its part concerning the independence of such a body.

Cf. para. 69

The Act defines the difference between national and ethnic minorities. However the national and ethnic minorities enjoy the rights contained in the Act to the same extent.

Cf. para. 71

It should be stressed that the allegation raised in this paragraph concerning discriminatory treatment of specific national and ethnic minorities by state authorities is not confirmed by any facts.

Cf. para. 72

The explanation contained in this paragraph concerning the operation of the Team for National Minorities is unclear. The Team is not divided into two working groups, but two separate structures function within the Team: Sub-team on Education of National Minorities and Sub-team for Roma Issues. Those names of the Team and sub-teams should be applied throughout the text. It should be additionally stressed that the Act on national and ethnic minorities and regional language has instituted a new advisory body to the Prime Minister - the Joint Commission of the Government and the National and Ethnic Minorities. The Commission will compose of the representatives of the Government administration and all national and ethnic minorities, as well the community using the regional language.

Cf. para. 82.

The credibility of the information supplied by the European Roma Rights Center has been questioned by the majority of experts on Roma problems and by NGOs dealing with assistance to the Roma minority.

As regards the charges concerning Police recruitment policy, it should be noted that under the Polish Constitution all citizens are equal before the law and thus have the same opportunity to find employment with the Police. The Police, as all other organs of the State, do not differentiate treatment of their employees depending on their ethnic origin. In consequence, data on the nationality of police officers is not collected.

Cf. para. 85

Representatives of national and ethnic minorities have not postulated the appointment of police mediators belonging to national and ethnic minorities. Moreover, there is no basis for claims that not enough minority representatives work as police officers. Thus, the postulate that their number should be increased is unfounded.

Cf. para. 114

Raising the level of public awareness about the culture, traditions and customs of the Roma community is one of the goals of the Programme for the Roma Community in Poland and of the National Programme for Countering Racial Discrimination, Xenophobia and Related Intolerance.

Cf. para. 116

The Programme for the Roma Community in Poland has among its main objectives improvement of education standards among the Roma by raising the percentage of graduating students, improving attendance and school performance of Roma children and youth, helping Roma youth continue their education at above-primary and academic levels.”

