**Ad Hoc Committee on the elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination**

**Questionnaire (paragraph 4 of A/HRC/RES/21/30)**

**INFORMATION BY POLAND**

i. Kindly provide information on the phenomena of xenophobia in your national context, including any general trends.

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| Monitoring cases related to hate crimes, including the incidents based on xenophobia, is the essential aspect of the activity of Human Rights Protection Team which is functioning in the Department of Control, Complaints and Petitions of the Ministry of the Interior. The Team monitors all incidents motivated by hostility based on prejudices connected with national origin, race, ethnicity, religion or lack of religious affiliation and other factors. These incidents may involve physical attacks, verbal abuse including hostile contents in the Internet, graffiti, damage to property, threats, grave and memorials devastation, attacks on places of worship.  The sources of information are: notifications of individuals, NGO and public institutions, press materials, as well as reports and elaborations prepared by NGO. When a case of hate crime or hate incidents is detected, members of HRPT contact law enforcement agencies and courts and obtain information about actions taken by those bodies and their results. Cases are being monitored from the moment it is detected until the end of actions of relevant bodies.  The statistics on hate crimes and hate incidents registered by Human Rights Protection Team are illustrated in the table below.   |  |  | | --- | --- | | YEAR | Number of cases (hate crimes and hate incidents) | | 2013 | **175** | | 2012 | **81** | | 2011 | **85** | | 2010 | **71** | | 2009 | **52** | | 2008 | **51** | | 2007 | **37** | | 2006 | **20** | | 2005 | **30** |   The gathered information are analyzed on a regular basis and they are used in purpose to elaborate the phenomena of racism, xenophobia and hate crimes in Poland. Data analysis concerning the types of incidents are being made since 2012. The results are put in tables below.  YEAR 2012:   |  |  |  | | --- | --- | --- | | Types of cases | | Number of cases (hate crimes and hate incidents) | | National and ethnic minorities | | 33 | |  | Anti-Semitism | 21 | | Anti-Roma | 7 | | Other minorities | 5 | | Political ideology, promoting totalitarian system | | 19 | | Rasism and xenophobia\* | | 24 | | Sexual orientation | | 3 | | Religion | | 2 | | **TOTAL** | | **81** |   \*acts committed because of the victims’ ethnic or national origin, excluding the groups of national and ethnic minorities.  YEAR 2013:   |  |  |  | | --- | --- | --- | | Types of cases | | Number of cases (hate crimes and hate incidents) | | National and ethnic minorities | | 45 | |  | Anti-Semitism | 25 | | Anti-Roma | 12 | | Other minorities | 8 | | Political ideology, promoting totalitarian system | | 40 | | Rasism and xenophobia\* | | 47 | | Sexual orientation | | 8 | | Religion | | 25 | | Word-view/ political affiliation | | 10 | | **TOTAL** | | **175** |   \*acts committed because of the victims’ ethnic or national origin, excluding the groups of national and ethnic minorities.  As it can be seen in the tables, cases of racism and xenophobia constitute the significant group of incidents registered by the Team. In 2012 it constituted 21% of all cases registered, in 2013 – 27% of all cases registered and it was the largest group of cases. |

ii. How is xenophobia addressed in your country (include any legal and judicial frameworks and practices, substantive and procedural measures)?

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| Remedies available to victims of acts of discrimination or more grave offences motivated by xenophobia are of diverse nature and applicable instruments can be found in different branches of law. First and foremost, the Polish Constitutions explicitly prohibits discrimination on various grounds and grants everyone the possibility of judicial recourse if one’s rights are violated to ensure an adequate compensation for both moral and pecuniary damage.  It is a matter of principle of the national legal system that civil law remedies should be given priority. The Civil Code provisions guarantee a wide protection of personal goods[[1]](#footnote-1) (Article 23) that are defined and interpreted by courts in an open manner, applying also to cases of discrimination based on xenophobia. The Civil Code affords possibility for redress for persons whose personal goods have been infringed or merely threatened. The protection applies both to cases where there is only a risk of infringement of personal goods (when it is possible to demand ceasing an action causing the infringement) and to cases where personal goods have actually been infringed (when it is possible to demand that a person who has committed the infringement should take the necessary steps to remove any consequences it led to). In terms of procedural guarantees, in instances of personal good violations Polish law introduces a reversed burden of proof, which means that it is for the defendant in such a proceeding to prove the existence of circumstances exempting the unlawfulness of his conduct (i.e. it is on the defendant to submit counter-evidence).  Protection from xenophobia-based acts of discrimination can be sought also under the Act on the implementation of some regulations of European Union regarding equal treatment. The act allows to pursue compensation in certain cases of equal treatment violations. A separate section of the Polish Labor Code also deals with the issue of equal treatment in employment, entitling discrimination victims to compensation.  In more serious cases criminal law mechanisms become applicable. As a general rule, the Criminal Code stipulates that motivation (also racial) of any crime has to be obligatorily taken into account by courts when assessing the level of social harm incurred by the crime and when determining the type and level of penalty. That is why crimes as defamation or inflicting bodily harm may carry a heavier sanction due to the fact they were motivated by any form of xenophobia, e.g. racial or national hatred.  Furthermore, the Criminal Code contains crimes that apply to xenophobic acts more directly, such as:  - promotion of fascist or any other totalitarian regime or inciting national, ethnic, racial, religious or non-religious-related hatred;  - publicly insulting a group or a person because of national, ethnic, race or religious affiliation.  On 1 January 2011 the Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment (hereinafter “the Equal Treatment Act”) entered into force. This was an important step towards consolidation of legal protection of the equal treatment principle under the Polish law.  The Equal Treatment Act specifies areas and methods of counteracting violation of equal treatment principle on the grounds of sex, race, ethnic origin, nationality, religion, denomination, world view, disability, age or sexual orientation. It fully implements the provisions of the EU antidiscrimination directives, defines legal measures to protect the principle of equal treatment and bodies responsible for implementing the principle of equal treatment.  The Actcontains definitions of direct and indirect discrimination, harassment, sexual harassment, unequal treatment, and principle of equal treatment.  In the event of a violation of the principle of equal treatment, damages may be claimed. The burden of proof in the proceedings is shifted – a plaintiff claiming that the principle of equal treatment has been violated must lend credence to the violation. In the event of lending credence to the violation of the principle of equal treatment, the party accused of violating the principle is obliged to prove that they did not violate the principle.  In order to combat hate crimes in Poland, including xenophobic crimes, educational initiatives are undertaken in Polish police aimed to increase police officers’ competences in conducting investigations in hate crime cases. Since 2006 within the police a special training program has been implemented - *Law enforcement officers program on combating hate crimes* (LEOP). LEOP is carried out by Polish police in cooperation with the Office for Democratic Institutions and Human Rights of the Organization of Security and Cooperation in Europe (ODIHR OSCE), Ministry of the Interior acts as program coordinator.  The Program is based on a system of vocational trainings on counteracting and combating hate crimes carried out in Polish police. The aim of those trainings is to teach Police officers the competence of identifying hate crimes, investigating them properly, reacting adequately and preventing hate crimes. Apart from passing on the expert knowledge, the trainings contain also working on participants’ attitudes and their awareness of the problem. The trainings are conducted in cooperation with NGOs and minority groups’ representatives who share their knowledge and experiences with participants.  LEOP trainings are obligatory and they are provided for police units in the whole country. They are being conducted since 2009 and about 70 thousands Police officers have been trained by the end of 2013 and that number is still growing. Trainings are addressed to police officers who are or could be directly confronted with hate crimes in their daily work. Since 2013 also management of Police units was covered by LEOP trainings as those people are responsible for determining the directions of actions taken by police officers in the unit.  In order to support educational process, teaching materials on hate crimes, including the leaflets for Police officers (containing major definitions and rules of proceeding that are discussed during the LEOP trainings as well as the most common hate symbols), were published.  Competences developed during LEOP trainings are supplemented with other educational initiatives in Police, like trainings, teaching materials, meetings with minority groups representatives, living libraries etc. For example, last year the manual titled *Human first. Antidiscrimination in police units* has been published. It contains, among others, information on the specificity of particular minority groups as well as guidelines for Police officers how to act and not to offend those people during the direct contact. |

iii. Which national mechanism(s) with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance does your country have in place? Kindly indicate the(ir) mandate(s) and powers, including any proposals for improvement on the basis of national experience.

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| Under the Equal Treatment Act, two specialized bodies are tasked with the implementation of the principle of equal treatment: the Human Rights Defender and the Government Plenipotentiary for Equal Treatment. Both bodies carry out their own projects within the scope of their respective mandates.  Firstly, the efforts to combat different forms of xenophobia, including racial discrimination, are undertaken by the Human Rights Defender, an independent constitutional body established to safeguard fundamental human and civil rights and freedoms.  Secondly, the Government Plenipotentiary for Equal Treatment (responsible for coordinating the government policy on equal treatment) is tasked with implementing state strategies aimed at strengthening the principle of equal treatment, in particular designed to counter different forms of discrimination.  In accordance with the Act, the Government Plenipotentiary for Equal Treatment prepared, in cooperation with all ministries and relevant offices, the National Programme for Equal Treatment for the years 2013-2016. The Programme sets goals and priorities regarding equal treatment in all spheres of social life, and indicates measures for counteracting discrimination based on sex, race, ethnic origin, nationality, religion, denomination, world view, disability, age, sexual orientation and gender identity. The Programme anticipates, among others, activities aimed at further general implementation of antidiscrimination policies, increasing activation and participation of women, Roma and foreigners in the labor market, preventing and combating hate crimes as well as ensuring equal treatment in education (including measures aimed at elimination of stereotypes and intolerance) and access to goods and services (including media). |

iv. Kindly provide information or any comments your country might have on the issue of procedural gaps to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), including any legal and judicial frameworks and practices, substantive and procedural measures.

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| In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the state party to provide information on its follow-up to the recommendations contained in concluding observations on periodic report. Nevertheless proper implementation of Committee recommendations requires their distribution among relevant state bodies in order to disseminate the knowledge of human rights standards set by the Committee. When received state bodies and institutions must assess the recommendations and design most effective ways of execution. Then appropriate measures are implemented, what is a long term process. What is more, coordination of efforts of various state institutions and compiling coherent follow-up information for the Committee is time-consuming process, which requires multilateral consultations. Then a final document must be formally approved. As a result adopting the follow-up may take up to 6 months. Due to above mentioned time restrictions the Committee receives document covering information about action still being developed or about early stage of their implementation. Having taken into consideration that circumstances, it is reasonable to consider prolonging 1-year term for state party to provide information on its follow-up to the recommendation of the Committee. |

viii. How is assistance provided to victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level? How do victims and/or affected communities participate fully and effectively in relevant processes and national mechanisms?

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| The Ministry of the Interior, apart from developing competences of law enforcement officers in investigating hate crimes, also undertakes the actions in order to encourage victims to report them. Therefore, Ministry of the Interior carries out the project *Immigrants against hate crimes - how to effectively assert your rights*, financially supported by the European Fund for the Integration of Third-Country Nationals. Within the project the information campaign on hate crimes has been conducted in the period of March-June 2014. The campaign was directed at third-country nationals who are currently living or staying in Poland. Its prime goal was to raise awareness of foreigners of hate crime law in Poland and action that they can undertake when they are faced with hate crimes and hate incidents. Accordingly, the purpose of the campaign is also to encourage the foreigners to report hate crimes to law enforcement as well as to call the attention of the whole society to hate crimes issue. The project is a response to opinions and necessities shared by foreigners as well as recommendations submitted by international organizations.  The campaign has been carried out in the whole country, and it was launched through different mass media channels e.g. multilingual leaflets and website, billboards, posters, spot. The leaflets and website www.reportracism.pl were published in 10 language versions: English, Russian, Polish, Ukrainian, French, Turkish, Armenian, Chinese, Vietnamese and Arabic. The website contains also contact form which allows to report a hate crime directly to Human Rights Protection Team. The leaflets are distributed among the foreigners via NGOs, universities and public institutions. The information about the campaign was disseminated by the billboards that was put on the streets of all major cities in Poland and by the posters put in the buildings of universities, public offices and police headquarters. The spot of the campaign was shown in public transport in Warsaw, Cracow, Białystok, Łódź, Lublin, Szczecin, Wrocław, on Internet channels as well as in four most popular TV channels. The information on the campaign was presented also in radio programmes.  The first results of the campaign are already seen. Since it started, the number of cases reported to Human Rights Protection Team by foreigners and Polish citizens has grown significantly.  As the second part of the project, the conference is planned in the end of 2014. The aim is to sum up the actions connected with informational campaign as well as to start the discussion and exchange experiences and observations concerning hate crimes issue. The presence of foreigners, NGOs and public institutions representatives will allow to develop the dialog among the conference participants and work together on the solutions aimed at counteracting and combating hate crimes in the future.  Apart from the aforementioned project, also on Human Rights Protection Team’s websitethe information on hate crime nature and on possible methods of reporting them as well as about the possible role of HRPT in the process were put. The website is functioning in three language versions: Polish, English and Russian.  The Ministry of Justice offers financial assistance to NGOs running support centers offering assistance to victims of crimes, including crimes motivated racially. 31 such facilities currently benefit from public funding, however, it is envisaged their network will be expanded in the near future. Civil society actors were also invited to join one of the MoJ’s advisory body, the Council for Crime Victims. |

1. A legal notion encompassing a wide variety of personal features or assets such one’s health, dignity, liberty but also name or image. The catalogue provided in the Civil Code in non-exhaustive and open to interpretations in the course of a judicial procedure. [↑](#footnote-ref-1)