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# Poland

## ***Constitution, Article 13 - Political pluralism***

Political parties and other organisations 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, (...) shall be forbidden.

***Criminal Code (1997) - Art. 119.*** § 1 Whoever uses violence or makes unlawful threat towards a group of person or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years. § 2. The same punishment shall be imposed on anyone, who incites commission of the offence specified under § 1.

## ***Criminal Code (1997) - Article 194. Offences against Freedom of Conscience and Religion***

Whoever restricts another person from exercising the rights vested in the latter, for the reason of this person affiliation to a certain faith or their religious indifference shall be

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subject to a fine, the criminality of restriction of liberty or the criminality of deprivation of liberty for up to 2 years.

***Criminal Code (1997) - Article 256 - Promotion of fascism or other totalitarian system.***

§1 Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 2. Whoever, in order to distribute produces, records or brings, buys, stores, posses, presents, transports or sends print, record or other item containing the substance referred to in § 1 or being a carrier of the fascist, communist or other totalitarian symbolism shall be subject to a punishment as referred to in § 1.

§3. The perpetrator of the prohibited act referred to in §2 shall not be deemed to have committed an offence if the act was committed as part of artistic, educational, collecting or scientific activity,

§ 4. In the event of conviction for the offence referred to in §2, the court shall order forfeiture althe objects specified in §2, even if they did not constitute the perpetrator 's property,

***Criminal Code (1997) - Article 257 - Publicly insulting group of people or an individual person by reason of their national, ethnic or racial affiliation..***

Whoever publicly insults a group within the population or a particular person because of his national, ethnic, race or religious affiliation or because of his lack of any religious denomination or for these reasons breaches the personal inviolability of another individual shall be subject to the penalty of deprivation of liberty for up to 3 years.

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# Case Law

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## Poland

In February 2007 the Supreme Court decided that holding a placard reading "We shall liberate Poland from (among others) Jews" did not amount to an offence under Article 256 of the Criminal Code. To reach this conclusion the court referred to Article 54 § 1 of the Constitution, which protects the right to express opinions, the ordinary meaning of the word "liberate" and the use of the indicative, as opposed to the imperative, which showed no intention to incite national hatred. ECRI recalls in this connection that, according to Article 10 of the European Convention on Human Rights, the right to freedom of expression may be restricted to protect the rights of others. It also considers that allowing the holding of such a placard to go unpunished falls foul of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

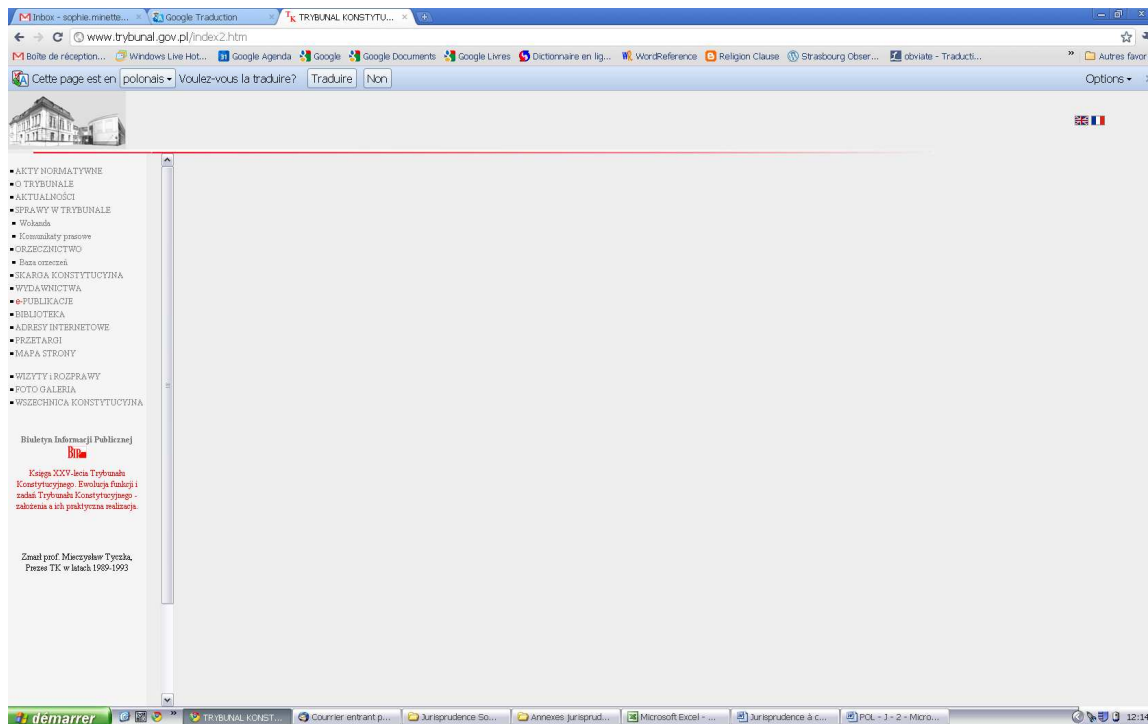
[ECRI, Fourth report on Poland, adopted on 28 April 2010, CRI(2010)18, § 21]

En février 2007, la Cour suprême a décidé que le fait de tenir une pancarte avec la phrase "Nous libérerons la Pologne des juifs (entre autres)" n'équivalait pas à une infraction au sens de l'article 256 du Code pénal. Pour dégager cette conclusion, elle a fait valoir l'article 54, paragraphe 1 de la Constitution qui protège le droit à la liberté d'expression, le sens ordinaire du verbe "libérer" et l'utilisation de l'indicatif par opposition à l'impératif qui ne témoigne pas d'une intention d'inciter à la haine nationale. L'ECRI rappelle à cet égard que, conformément à l'article 10 de la Convention européenne des droits de l'homme, le droit à la liberté d'expression peut être soumis à certaines restrictions pour protéger les droits d'autrui. Elle considère aussi qu'autoriser une telle pancarte sans que cela n'entraîne de sanction est contraire à sa Recommandation de politique générale n° 7 sur la législation nationale pour lutter contre le racisme et la discrimination raciale.

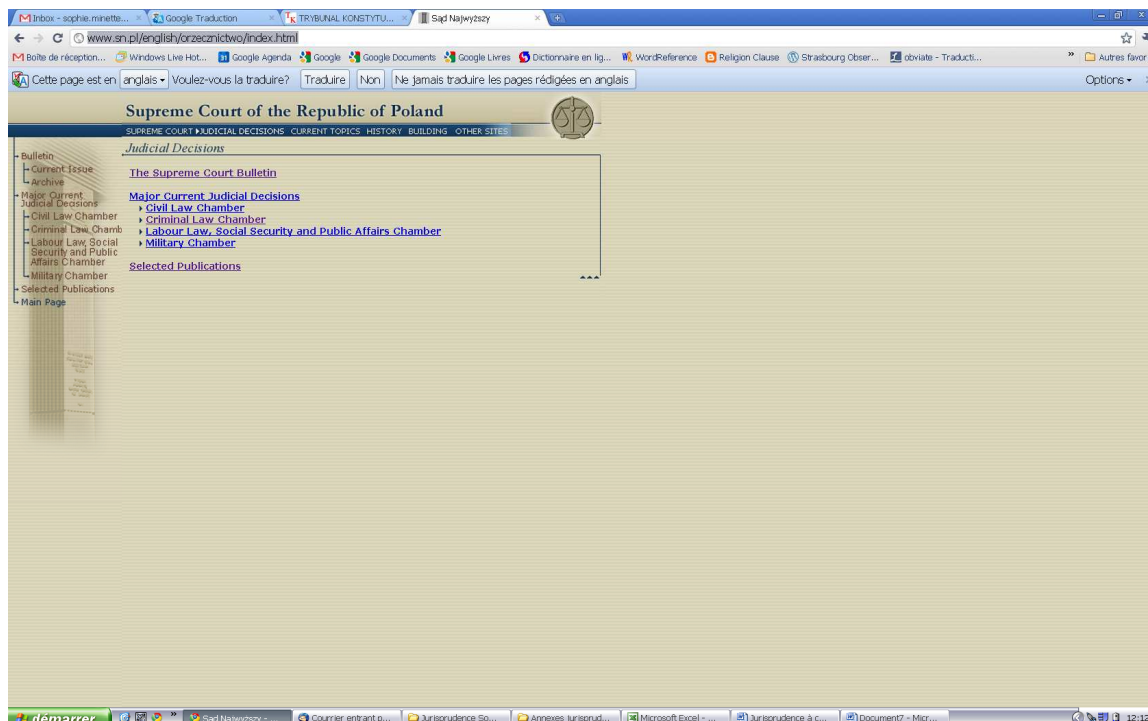
[ECRI, Quatrième rapport sur la Pologne, adopté le 28 avril 2010, CRI(2010)18, § 21]

# Poland

Constitutional Court: <http://www.trybunal.gov.pl/index2.htm>



Supreme Court (decisions): <http://www.sn.pl/english/orzecznictwo/index.html>



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# Public Policies

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PERMANENT MISSION  
OF THE REPUBLIC OF POLAND  
TO THE UNITED NATIONS OFFICE  
AT GENEVA



MISSION PERMANENTE  
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No 898 /ML/2010

**OHCHR REGISTRY**

6 - OCT 2010

Recipients : *I.S.* .....  
*H.C.* .....  
 .....  
 .....

The Permanent Mission of the Republic of Poland to the United Nations Office and other International Organizations at Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to transmit herewith the reply of the Government of the Republic of Poland to the letter sent by Her Excellency Navanathem Pillay, the United Nations High Commissioner for Human Rights, dated on 3<sup>rd</sup> of August, 2010, concerning the Member States' experiences with regard to implementing the prohibition of indictment to hatred through national legislation, judicial practices and different types of policies.

The Permanent Mission of the Republic of Poland to the United Nations Office and other International Organizations at Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration. *A.S.*

Geneva, 6 October 2010

Enclosure - 3 pages



Office of the United Nations High Commissioner for Human Rights  
Geneva

**Hate crime definition in Polish Law**

The Polish Criminal Code does not define hate crime, though it penalizes acts the perpetrators of which target their victims due to the victims' particular traits. Thus, these acts, described in articles 118, 119, 256 and 257 of the Criminal Code in accordance with the ODIHR OSCE, can be viewed as belonging to the category of hate crimes. They also include incitement to hatred because of race, nationality, ethnic origin or religion, specified in Article 256 of the CC:

*§ 1. Whoever publicly promotes a fascist or other totalitarian state system or incites hatred based on national, ethnic, race or religious differences or for reason of lack of any religious beliefs shall be subject to a fine, the penalty of restriction of freedom, or the penalty of deprivation of freedom for up to 2 years.*

*§ 2. The same penalty shall apply to whoever, for the purpose of distribution, produces, records or imports, acquires, stores, possesses, presents, transports or sends printed matter, recordings or other objects containing content referred to in §1 or constituting carriers of fascist, communist or other symbols.*

*§3. The perpetrator of the prohibited act referred to in §2 shall not be deemed to have committed an offence if the act was committed as part of artistic, educational, collecting or scientific activity.*

*§ 4. In the event of conviction for the offence referred to in §2, the court shall order forfeiture of the objects specified in §2, even if they did not constitute the perpetrator's property.*

**Implementation of the provisions of Articles 19 and 20 of the ICCPR**

Issues connected with the implementation by Poland of the provisions of Articles 19 and 20 of the International Covenant on Civil and Political Rights primarily fall within the competence of the Government Plenipotentiary for Equal Treatment, established under a Council of Ministers regulation of 22 April 2008.

The Plenipotentiary takes action in response to complaints or reports by individual citizens, groups of citizens or NGOs and media reports, or on her own initiative. The Plenipotentiary's annual report groups cases according to discrimination because of race, nationality, ethnic origin, religion and creed.

In the period from 1 January 2010 to 28 July 2010 the Plenipotentiary handled 28 cases regarding discrimination because of race, nationality and ethnic origin. The complaints mainly concerned participation in public life (8 complaints), education and employment (2 each) and such issues as the conditions of incarceration, procedures used for the expulsion of foreigners, and racist and xenophobic statements. During the same period the Plenipotentiary also received 3 complaints relating to discrimination because of religion or creed in the sphere of education and participation in public life.



The Plenipotentiary takes up cases stemming from racial hatred, xenophobia, anti-Semitism, homophobia and other forms of intolerance. From the beginning of her activity, the Government Plenipotentiary for Equal Treatment took action on 21 such hate-related cases, acting on her own initiative or in response to press reports in 19 cases, and in response to complaints in 2 cases. The cases involved homophobia (5), anti-Semitism (4), anti-Roma discrimination (2) and Islamophobia (1).

The number of cases in which the Plenipotentiary intervenes is growing steadily, though this is natural for a relatively young institution.

With a view to the implementation of Article 19 and 20 of the International Covenant on Civil and Political Rights on 31 August 2001 the Council of Ministers adopted a draft *Law on the introduction of certain European Union regulations on equal treatment*, prepared by the Government Plenipotentiary for Equal treatment. The law will apply to physical and legal persons and organizational units granted legal capacity under the law.

The draft law defines direct discrimination, indirect discrimination, harassment, sexual harassment and unequal treatment. The draft prohibits unequal treatment because of sex, race, ethnic origin or nationality with regard to:

- access to and conditions of social security, access to services (including housing), goods and acquisition of publicly offered rights,
- access to health care, schooling and higher education.

The law also bans unequal treatment due to nationality, religion, creed, world outlook, disability, age or sexual orientation with regard to:

- vocational training (qualification enhancement, in-service training, requalification and vocational practice),
- initiation and conducting of business or vocational activity, including activity on the basis of employment or other civil law contracts,
- membership of and activity in trades unions, employer organizations and professional associations,
- access to all instruments of the labor market and services offered by the relevant institutions and entities involved in the promotion of employment, human resources and counteracting unemployment.

In the event of unequal treatment, the injured party will be entitled to claim compensation. The relevant cases will be subject to the Civil Code.

As concerns the burden of proof, the party that charges unequal treatment has to demonstrate the probability of its occurrence. The charged party has to show that it did not commit the

violence. This is particularly important in harassment or sexual harassment cases, where proving points is usually difficult or impossible.

Pursuant to the draft law, tasks relating to the implementation of the principle of equal treatment will fall within the competence of the Civil Rights Ombudsman and the Government Plenipotentiary for Equal Treatment. The Plenipotentiary will submit to the Council of Ministers a national program of actions to promote equal treatment, elaborating the goals and priorities in this area.

#### **Other actions concerning prevention of discrimination**

The Ministry of Interior and Administration is implementing educational programs relating to the issues raised in the High Commissioner's letter.

Particular attention is due to a training program for Police officers, launched in 2006. It deals with prevention of racial discrimination, anti-Semitism and xenophobia and is called *the Law Enforcement Officer Program on Combating Hate Crimes*. The project is coordinated by the Ministry and is being implemented in collaboration with the ODIHR OSCE.

Under the Program, the Shupsk Police Academy hosted in September 2008 a Police Forum Against Discrimination, attended by Police officers, members of national, ethnic and religious minorities and representatives of NGOs concerned with human rights.

The program also includes a system of in-service training courses for Police officers. The participants are taught how to recognize hate crimes, how to respond to them and prevent their occurrence. The training has a cascading structure: first, it is held at national level for trainers, i.e. officers from province-level Police headquarters and Police academies. Next, one-day courses are conducted at local level for officers who come in daily contact with hate crimes (officers of criminal and prevention branches) from municipal, town, and regional units in the respective provinces. Instruction is given by Police, ODIHR OSCE, Ministry and NGO lecturers.

The training program was initiated in November 2009. To date, training has been provided to 50 trainers at national level and 1700 Police officers at province level. It is planned that a total of 10 000 Police officers will take part in the program.