



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Information received from Poland on follow-up to the
concluding observations on its twenty-second to
twenty-fourth periodic reports***

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* The present document is being issued without formal editing.



I. Follow-up information relating to paragraph 10 (a) (a national human rights institution) of the concluding observations (CERD/C/POL/CO/22-24)

1. Bearing in mind the limited possibilities of the state budget and taking into account the special nature of the Commissioner's activity, including tasks related to the combating of all forms of discrimination, note that the budgets of the Polish Commissioner for Human Rights institution in the recent years have been given priority and have been exceptions to the general rules stipulated in acts related to the budget implementation (the so-called "budget-related" acts). The Act of 22 December 2011 on the amendment of certain acts related to the implementation of the budget act, Art. 24(3)(3) provides for additional funds for remuneration amounting to PLN 1,000,000 (i.e. approx. EUR 235,916) in connection with the creation of new jobs in 2012 in the budgetary section assigned to the Commissioner for Human Rights. The Act of 7 December 2012 on the amendment of certain acts in connection with the implementation of the budget act, Article 16(3)(1)(a) also provides for additional funds for remuneration amounting to PLN 667,000 (approx. EUR 157,356) to be allocated to the creation of new jobs in 2013. In line with the explanatory memorandum to the draft act, the increase in staff remunerations was related to the performance of the tasks imposed on the Commissioner, including those under the UN Convention on the Rights of Persons with Disabilities. The expenses of the Commissioner for Human Rights in years 2015–2020 covered in the budget acts were as follows (in PLN thou).

<i>Year</i>	<i>Draft budget submitted by the Commissioner</i>	<i>Budget act</i>	<i>Amendments of the Sejm to the draft budget act</i>	<i>Planned employment in full-time equivalents</i>
2015	41 989	38 602	3 387	318
2016	45 392	35 619	9 773	318
2017	40 786	37 182	3 604	320
2018	42 639	39 433	3 206	320
2019	48 109	40 883	7 226	320
2020	59 787	45 214	14 573	320

II. Follow-up information relating to paragraph 12 (a), (b), (c) (institutional framework) of the concluding observations

Follow-up information relating to Paragraph 12 (a)

2. It should be pointed out that pursuant to Article 70 of the Act of 23 January 2020 on the amendment of the Act on departments of government administration and certain other acts, the function of the Government Plenipotentiary for Equal Treatment (including the staff) was moved from the Chancellery of the Prime Minister of Poland to the Ministry of Family, Labour and Social Policy as of 29 February 2020. A draft regulation of the Prime Minister is currently proceeded to move the expenses planned in the budget act for 2020 for the functioning of the Plenipotentiary from section 16 – the Chancellery of the Prime Minister of Poland to Section 63 – Family, in the total amount of PLN 1,353,950, of which the expenses from the state budget are PLN 865,950 (including remunerations amounting to PLN 658,000) and expenses from the European funds budget are PLN 488,000. These are funds for the performance of the Plenipotentiary's tasks in the period of 10 months. Moreover, Section 83 – Dedicated provisions, items 8 and 98 also secure a total of PLN 393,000 as funds earmarked for the implementation by the Plenipotentiary of a project called "The development and implementation of a coherent system of monitoring gender equality and a model of cross-sectoral cooperation for gender equality".

Follow-up information relating to paragraph 12 (b)

3. Pursuant to Order No. 53 of the Prime Minister of 27 April 2016, Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance was dissolved. According to the Government, despite the undertaken initiatives, the Council did not fulfil

its role, which was to counter xenophobia, intolerance and discrimination, effectively; it would be also difficult to point out any tangible effects of its functioning.

4. Under the Order No. 24 of the Prime Minister of 20 February 2018, an Interministerial Team for countering the promotion of fascism or other totalitarian systems or offences of incitement to hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination was appointed. Pursuant to the provisions of the said order, the tasks of the Committee were to identify issues emerging in the practice of prosecuting offences of publicly promoting a fascist or other totalitarian system of state or inciting hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious denomination, and also to draw up guidelines for possible legislative amendments aimed at eliminating the identified phenomena and issues.

5. As part of the Team's work:

- With Decision No. 1 of 12 March 2018 – the Task Group on the identification of issues related to the prosecution of offences of publicly promoting fascism or other totalitarian systems or inciting hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious denomination. The Group was led by Superintendent Jarosław Szymczyk, Police Commander in Chief;
- With Decision No. 2 of 12 March 2018 – the Task Group on legal solutions for the penalisation of promotion of fascism or other totalitarian systems or offences of inciting hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious denomination. The Group was led by Mr Łukasz Piebiak, an Undersecretary of State in the Ministry of Justice, preceded by Mr Michał Woś, an Undersecretary of State in the Ministry of Justice;
- With Decision No. 3 of 12 March 2018 – the Task Group on the prevention of offences of publicly promoting fascism or other totalitarian systems or inciting hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious denomination and non-legislative measures. The Group was led by Mr Adam Lipiński, the Government Plenipotentiary for Equal Treatment. The Group was formed by the representatives of: the Ministry of Culture and National Heritage, Ministry of Internal Affairs and Administration, Ministry of Foreign Affairs, Internal Security Agency and General Police Headquarters; the representatives of the Ministry of National Education were also invited to participate in the work.

6. The above-mentioned Team ended its work on 30 June 2018. Subsequently, on 3 July 2018, the Minister of Internal Affairs and Administration submitted "A report on the work of the Interministerial Team for countering the promotion of fascism or other totalitarian systems or offences of incitement to hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination" to the Chancellery of the Prime Minister. The said Report contains recommendations concerning proposed legislative amendments.

7. In line with the Memorandum of Understanding No. 40/2018 from the meeting of the Council of Ministers, on 30 October 2018, the Minister of Foreign Affairs and Administration was designated as the entity to monitor the status of implementation of the recommendations of the Interministerial Team (...). The above-mentioned task is carried out by the Department of Public Order by submitting the so-called task information sheet to the Chancellery of the Prime Minister.

8. The current status of implementation of the recommendations included in the Report of the Interministerial Team (...) in accordance with the obligations imposed on each Minister and the Head of the Internal Security Agency (Polish: Agencja Bezpieczeństwa Wewnętrznego, ABW) is as follows:

- (i) Recommendations no. 1–4 which are the responsibility of the Minister of Justice and Public Prosecutor General were covered by an act amending the Penal Code Act and certain other acts, submitted by the Minister of Justice, adopted by the Sejm of the Republic of Poland on 13 June 2019 and submitted to the President of the Republic of Poland for signature on 14 June 2019. On 28 June 2019, the President of the Republic of Poland, Mr Andrzej Duda petitioned the Constitutional Tribunal to examine the constitutionality of the above-mentioned act. The decision

to refer the act to the Constitutional Tribunal was justified primarily with an analysis of the legislative process. The mode of proceedings concerning the said act raised serious doubts as to the compliance with the constitutional standards of the legislative process. In reply, the Constitutional Tribunal ruled in a decision case file KP1/2019 of 14 July 2020 that the above-mentioned act in its entirety is not in accordance with Article 7 in conjunction with Article 112 and Article 119(1) of the Constitution of the Republic of Poland (non-compliance with the principle of legality);

(ii) Recommendation no. 5 concerning the penalisation of conduct related to paying tribute or other form of commemoration of historical figures responsible for Nazi or Communist crimes – add Article 256a to the Penal Code – also remains unfulfilled;

(iii) Recommendation no. 7 concerning the establishment of “A uniform catalogue of symbols considered prohibited” has been fulfilled. A Task Group, formed e.g. by representatives of the Internal Security Agency, Police, National Public Prosecutor’s Office and representatives of academic circles, drew up a list of symbols used by extremist groups. The above-mentioned catalogue will be used by law enforcement agencies to facilitate their work; however, the material is educational (illustrative) only;

(iv) Recommendation no. 6 for the Minister of Foreign Affairs and Administration concerning the amendment of the Police Act by extending the catalogue of offences which could be subject to operating surveillance to include Article 256 of the Penal Code still remains to be fulfilled. The above-mentioned task will be fulfilled with the next amendment to the Police Act having a similar regulatory scope.

Follow-up information relating to paragraph 12 (c)

9. The independence of the Polish judiciary is guaranteed in Article 173 of the Constitution, which states that the courts and tribunals shall constitute a separate power and shall be independent of other branches of power. Moreover, pursuant to the provision of Article 178(3) of the Constitution of the Republic of Poland, a judge shall not belong to a political party, a trade union or perform public activities incompatible with the principles of independence of the courts and judges.

(i) Appointment of judges

10. In line with Polish law, a judge shall be appointed once by the President of the Republic of Poland, on the motion of the National Council of the Judiciary, for an indefinite period (Article 179 of the Constitution).

11. The appointment to a specific judicial position by the President of the Republic of Poland terminates the designation procedure. The act is final and irreversible, which is immanently related to the need to fulfil the guarantee of the irremovability of judges, as provided for in Article 180(1) of the Constitution of the Republic of Poland. Under Article 144(3) (17) of the Constitution, the authority to appoint judges belongs to those official acts of the President which do not require, for their validity, the signature of the Prime Minister (prerogative). Upon the appointment by the President, the employment relationship is established for the judge. There are no further constitutional regulations which would allow one to assess the effect of the judge appointment act. In consequence, it is inadmissible to deny or even examine the existence of the employment relationship of a judge formed by the President’s act. The President of the Republic of Poland has the sole responsibility for the exercise of the prerogative and there is no possibility to challenge such an act effectively – regardless of any breaches preceding the exercise of the prerogative at the stage of proceedings regulated by acts which precede the appointment to the office of the judge. The foregoing does not prejudice the possibility to deny the impartiality or even more broadly the independence of the judge when hearing a specific case, on the basis of relevant factual circumstances revealed. This does, however, preclude the admissibility of finding in abstracto that the person appointed to the office of the judge does not have a status authorising him/her to carry out judiciary tasks.

12. Article 180 of the Constitution states that judges shall not be removable, and recall of a judge from office, suspension from office, transfer to another bench or position against his will, may only occur by virtue of a court judgement and only in those instances prescribed in statute (Article 68 of the Act of 27 July 2001. Law on Common Courts Organisation, which defines the instances when the employment relationship of a judge is terminated).

(ii) *The National Council of the Judiciary*

13. The National Council of the Judiciary (Polish: Krajowa Rada Sądownictwa, KRS) may not be included in any of the three powers mentioned in Article 10(2) of the Constitution of the Republic of Poland and does not fulfil any functions in the administration of the judiciary.

14. The majority of the members of the National Council of the Judiciary are judges (17 out of 25 members, more than 2/3). As regards the judges, two of them are ex officio members, while 15 of them are elected by the parliament with a majority of 3/5 of votes or more. Upon the election, there are no mechanisms which would allow the parliament or government to affect the decision of KRS – the judges shall not be recalled and there are no effective means to exert any pressure on them.

15. The election of the KRS members by the Sejm does not restrict the independence of the body nor does it hamper its execution of constitutional obligations. It should be emphasised that different solutions are used in European states for the election of members who form bodies of a similar nature of the Polish KRS. In some of them, the executive or the legislative can influence the election.

16. It should be also emphasised that no regulation introduces a principle of subordination of the members of the National Council of the Judiciary to any external authority, as it is necessary to distinguish the very act of appointment by the competent entity and the subsequent functioning of the Council.

17. Besides the 17 member judges, the Council also has two members from opposition groups represented in the parliament. Any instances of improper influence may be easily communicated to the public, as all meetings are conducted openly and with an active participation of members independent from the (present or future) governing majority.

(iii) *The administrative supervision of common courts by the Minister of Justice*

18. The Minister of Justice in Poland is a government administration body responsible for the efficient and effective operation of common courts. It is accountable politically to the Sejm. It only performs the administrative supervision of courts and does not interfere with court decisions.

19. For the Minister of Justice to carry out the assigned tasks, the Minister should have an actual influence on the selection of the managerial staff on all the levels of the judiciary. Like any state authority, it has the appropriate tools to be able to perform its tasks. One of the tools is to make staff decisions related to the presiding judges of courts who are counterparts of middle and lower rank managers.

20. The post of the presiding judge of a court is not a higher rank judicial position and the appointment to such a position is not promotion. The promotion of a judge is only when the judge assumes a judicial position at a superior court. The possibility to perform the function of the presiding judge is limited to the period defined in an act (term).

21. The authority to recall presiding judges of courts rests with the Minister of Justice but the Minister needs to obtain the consent of the Board of the relevant court and if there is no such consent – the consent of the National Council of the Judiciary. Law also provides for clear criteria for the recall of the presiding judge of the court from the function, which are restricted to the instances of gross or persistent failure to fulfil official duties, determination of exceptionally low efficiency of activities performed as part of the administrative supervision or organisation of work in the court or courts of lower rank, filing of a resignation from the function or the case when the further performance of the function is incompatible with the interests of the judiciary.

22. The recall of the presiding judge only means that the person is deprived of the possibility to perform the administrative function in this court and does not remove him/her from the position of the judge as judges in Poland are irremovable.

23. It should also be pointed out that the executive has no influence on the career of judges. Promotion is based on the evaluation by an inspecting judge and opinions expressed by the board of the court and KRS. An applicant is assessed on the merits and the assessment is based on the analysis of files of several dozens of cases closed by the judge.

III. Follow-up information relating to paragraph 16 (b), (c) and (d) (racist hate speech and offences motivated by racial hatred) of the concluding observations

Follow-up information relating to paragraph 16 (b)

24. The combating of offences motivated by xenophobia, racism or prejudice is included in the Priorities of the Police Commander in Chief on account of the high social harmfulness of such acts. Performing the foregoing, the Criminal Office of the National Police Headquarters monitors offences motivated by hatred, e.g. by gathering and analysing information on the scale of the phenomena and modi operandi of perpetrators.

25. The coordinators for combating hate crimes continue their work within the criminal department in all the provincial headquarters/Metropolitan Police Headquarters. For example, they send monthly information about forbidden acts motivated by prejudice. The data is analysed and on the basis of the analysis new solutions are implemented in order to increase the efficiency of combating racist or xenophobic offences. Such analyses are used to assess the training needs of police officers handling the issue.

26. As a result of the growing rate of negative statements on the Internet since September 2017, the monitoring of issues related to hate crimes, at the provincial level, rests with the Cyber Crime Divisions established in the provincial police headquarters/Metropolitan Police Headquarters, where coordinators are appointed in units competent for combating cyber crime. In the National Police Headquarters, the function of the coordinator for combating hate crimes in the cyberspace is performed by a designated police officer of the Cyber Crime Office of the National Police Headquarters.

27. If websites containing content in the defined scope or information concerning hate crimes penalised in the Penal Code are revealed, the designated coordinators take further action in order to determine the personal data of Internet users responsible for the dissemination thereof. Subsequently, the determined data is sent to the locally competent public prosecutor's offices for the purposes of further proceedings.

28. The Intelligence Division of Cyber Crime Office of the National Police Headquarters includes the 24-Hour Service Section which receives information from Internet users about inappropriate content in the Internet. If such a report is confirmed, the material is secured by the on-duty officers in the 24-Hour Service Section, Intelligence Division, Cyber Crime Office of the National Police Headquarters, for the purposes of further operations.

29. In addition, on 21–27 October 2019, the Cyber Crime Office of the National Police Headquarters and the Research and Academic Computer Network (Polish: Naukowa Akademicka Sieć Komputerowa, NASK) undertook actions against hate crimes. The aim was to identify perpetrators of relevant offences, gather materials on findings and submit them to Police units and Public Prosecutor's Offices in order to initiate preliminary proceedings.

30. During the above-mentioned actions, the Cyber Crime Divisions of the provincial police headquarters/Metropolitan Police Headquarters intensified their operations aimed at revealing potential acts bearing the features of offences related to the hate speech issue in the Internet resources, mostly in comments posted under articles on websites, on social portals such as Facebook or Twitter, different types of forums or in the YouTube channel. The said operations resulted in revealing 36 cases of diverse entries made by Internet users that could constitute hate crimes and cases were referred to the locally competent Public Prosecutor's Offices.

31. The officers of the Office participate as experts in periodic training workshops on the issues of combating hate crimes organised by the Criminal Office of the National Police Headquarters.

32. In order to raise the level of knowledge and competence of police officers, successive official meetings combined with training workshops were organised and they concerned “the issues of combating hate crimes”; they were attended by the coordinators from the provincial police headquarters/Metropolitan Police Headquarters and representatives of the Ministry of Internal Affairs and Administration, Ministry of Justice, National Public Prosecutor’s Office, Office of the Commissioner for Human Rights, Internal Security Agency and social organisations involved in the issues of protection of human rights and discrimination. During the above-mentioned meetings, the coordinators exchanged knowledge and experiences and informed about the completed cases related to hate crimes in each garrison.

33. On 24–26 September 2019, in Jurata, an official meeting was held by the Criminal Office of the National Police Headquarters and it was devoted to the issues of combating, detecting and prosecuting hate crimes. Each garrison was represented by a coordinator designated to monitor offences motivated by xenophobia, racism or prejudice. During the said undertaking, the recommendations of the UN Committee on the Elimination of Racial Discrimination (CERD) in Geneva were presented among other things.

34. Concurrently and consistently, periodic training was provided as workshops: “The combating of racist or xenophobic offences”. The above-mentioned workshop are addressed to police officers in the criminal investigation units who carry out operations in cases concerning hate crimes. The workshop programme focuses on discussing legal aspects of combating prejudice-motivated crimes, including forbidden acts committed using the Internet. Moreover, the said meetings also present international and constitutional regulations concerning hate speech and freedom of speech. In the years 2018–2019, the Criminal Office of the National Police Headquarters conducted a total of 4 such training workshops attended by 83 police officers from all the Police garrisons. 32 police officers were trained in 2018 and 51 police officers were trained in 2019.

35. The representatives of the Criminal Office of the National Police Headquarters also participate in training and meetings on the national forum on issues concerning the combating of offences motivated by racism, anti-Semitism or xenophobia.

36. On account of the current epidemic state due to COVID-19 and the restrictions introduced, on 10 March 2020, all the planned training was cancelled at the order of the Police Commander in Chief.

37. The legal provisions currently in force, in particular the provisions of the Penal Code (e.g. Article 119 § I of the Penal Code, Article 256 § 1 and 2 of the Penal Code and Article 257 of the Penal Code), the provisions of the Code of Criminal Procedure and Guidelines of the Public Prosecutor General of 26 February 2014 on conducting proceedings in relation to hate crimes, provide comprehensive regulation of criminal proceedings for offences committed against a group of people or an individual because of their national, ethnic, racial, political or religious affiliation or because of their lack of religious denomination.

38. Every case of preliminary proceedings for a hate crime is considered serious and obliges one to inform the superior public prosecutor about initiating the preliminary proceedings, operations that are essential for the course of the proceedings as well as any incidents during the proceedings. Once informed about such a case, the public prosecutor who leads a higher organisational unit assesses whether there are any premises for official supervision of the case by a superior.

39. Cases for hate crimes terminated by the refusal or discontinuance of the preliminary proceedings are examined periodically – after the end of every half year – by superior public prosecutors in higher units as regards the regularity of the proceedings and validity of the substantive decision.

40. At every stage of the preliminary proceedings, one strives to make accurate and reliable findings concerning the intent of the perpetrator on the basis of evidence taken, and any operations with the participation of the victims are conducted with respect for their dignity and in such a way as to prevent their secondary victimisation.

41. Such cases are subject to exceptionally profound internal official supervision whose effectiveness and regularity are subject to control as part of periodic inspections carried out by superior units of the public prosecutor's office.
42. The National Public Prosecutor's Office undertakes action related to combating racist offences. Its aim is to increase the efficiency of prosecution and the rate of detection of perpetrators of such conduct and to bring them to justice immediately. The above-mentioned action applies to all forms of discrimination not only on account of the race but also nationality, ethnicity, political or religious affiliation or lack of religious denomination.
43. The regional public prosecutor's offices, provincial public prosecutor's offices and the Preliminary Proceedings Department of the National Public Prosecutor's Office perform continuous monitoring of cases for hate crime, which involves systematic collection and analysis of materials, including data on the form, tendencies and dynamics of such crime, modus operandi of perpetrators as well as circumstances conducive to the commitment of such crime.
44. In order to increase the efficiency of proceedings for hate crimes, one (or more if required) district unit is designated in each regional public prosecutor's office to handle cases of this category and two public prosecutors are designed for cases of this category in each unit. In consequence, a group (of approx. 100) public prosecutors is identified for such proceedings among all the public prosecutors who perform their official duties at the level of district public prosecutor's offices. Further, one public prosecutor is designated in each regional public prosecutor's office to monitor such cases and one public prosecutor is designated as a consultant in each provincial public prosecutor's office.
45. When conducting or supervising proceedings for hate crimes committed using the Internet, public prosecutors are obliged to follow the rules arising from the order of the Public Prosecutor General of 27 October 2014 which address general issues, the securing and fixing of evidence in criminal proceedings, the scope of non-criminal operations as well as cooperation with other institutions.
46. In view of the fact that the use of the Internet for committing hate crimes is particularly dangerous due to the difficulties in the identification of perpetrators and the reach of information provided, both with regard to the number of victims and the possible inspiration of further acts towards the victims, a direction was given to take a wider scope of action ex officio and also consider the responsibility of service providers as defined in the Act of 18 July 2002 on Providing Services by Electronic Means.
47. Further, if breaches of provisions of Part 7 of the Telecommunications Law of 16 July 2004 are found, especially as regards the storage and disclosure of data and information to the competent authorities, the competent provincial or district public prosecutor is obliged to notify immediately the President of the Office of Electronic Communications.
48. In criminal proceedings, evidence should be secured with the involvement of a specialist, by copying source files and screens to a non-rewritable storage medium, and a document needs to be drawn up for the operation in the form of a record where hardware and software parameters and the fixing mode need to be written down.
49. If required to establish the facts, the IP address of the computer used to commit the crime and public or private surveillance records should be obtained forthwith.
50. In the case of preliminary proceedings initiated for an indictable offence, the public prosecutor should send ex officio an official notification to the electronic service provider, indicating the illegal nature of the data posted on the Internet by the service provider.
51. On the other hand, for cases for offences subject to a private prosecution where the public prosecutor refused to initiate proceedings ex officio and if no grounds are found for non-criminal action by the public prosecutor, the public prosecutor should inform the victim about civil or administrative legal measures the victim may take on his/her own.
52. It is also advisable for the public prosecutor, at the victims' request, to declare his/her participation in proceedings before administrative courts which are pending with regards to complaints by victims of Internet offences and who have been denied access to the data of the perpetrators with a final decision.

53. In planning and performing operations in such proceedings, one should also take into account the cooperation with other state or non-governmental institutions and bodies, and if there are difficulties in identifying perpetrators or it is necessary to collect evidence abroad, one should consider ordering the Police to make relevant findings in collaboration with Europol.

54. Note also that an act amending the Penal Code Act and certain other acts was adopted on 13 June 2019 (Sejm paper no. 3451, 8th term Sejm of the Republic of Poland); the draft had been prepared in the Ministry of Justice. Its provisions are aimed at strengthening criminal law protection in relation to acts against fundamental legal interests such as human life or health, sexual freedom and ownership. It includes an amendment to Article 53 of the Penal Code Act of 6 June 1997 which regulates court sentence directives in such a way as to clearly indicate the circumstances incriminating the perpetrator of the act and thus the impact on the punishment imposed by the court. The following examples of such circumstances are given: a way of acting which results in the humiliation or anguish of the victim, commitment of an offence out of motives deserving particular condemnation or out of base motives, commitment of a violent offence motivated by hatred because of the victim's national, ethnic, racial, political or religious affiliation or because of the victim's lack of religious denomination.

55. Further, the above-mentioned act makes the following amendments to the wording of Article 256 of the Penal Code:

- in § 1 of the Penal Code, penalisation of conduct which also involves the promotion of the Nazi or Communist system is introduced;
- § 1a of the Penal Code is added and penalises conduct which involves the public promotion of the Nazi, Communist or fascist ideology or ideology inciting to use violence in order to influence the political or social life;
- § 2 of the Penal Code also penalises conduct involving the sale and offering of prints, recordings or other items with content used to promote totalitarian systems or ideologies or an ideology inciting to use violence in order to influence the political or social life;
- the penalty carried by an offence under § 1 of the Penal Code is increased to the imprisonment for up to 3 years (at present, a fine, restriction of personal liberty or imprisonment for up to 2 years).

56. On 28 June 2019, the President of the Republic of Poland, Mr Andrzej Duda petitioned the Constitutional Tribunal to examine the constitutionality of the above-mentioned act. The decision to refer the act to the Constitutional Tribunal was justified primarily with an analysis of the legislative process. The mode of proceedings concerning the said act raised serious doubts as to the compliance with the constitutional standards of the legislative process. In reply, the Constitutional Tribunal ruled in a decision case file KP1/2019 of 14 July 2020 that the above-mentioned act in its entirety is not in accordance with Article 7 in conjunction with Article 112 and Article 119(1) of the Constitution of the Republic of Poland (non-compliance with the principle of legality).

57. As regards the countering of threats from the cyber space, the action of the Ministry of National Education focuses on designing system solutions to guarantee safe conditions for the education, upbringing and care and to support schools and education system facilities in their implementation of relevant tasks.

58. The general provisions of the Education Law Act¹ of 14 December 2016 state that the education system ensures education defined as supporting the child's development towards full maturity in the physical, emotional, intellectual, spiritual and social spheres. Another task of the education system is to disseminate among children and the youth the knowledge of cybersecurity and to shape appropriate attitudes towards threats, including the ones related to the use of information and communication technologies. The schools and facilities that give pupils/students access to the Internet are obliged to take measures protecting pupils/students against access to such content which could endanger their right development, in particular install and update security software. The school principal who is responsible for ensuring the pupils'/students' safety decides on the selection of specific

¹ Journal of Laws of 2017 item 59 as amended.

measures and forms to carry out the obligation. The principal also has the obligation to care for the pupils/students and ensure their safety during activities organised at school or outside school.

59. With a view to the need for constant upgrading of the teachers' competence, the Education Development Centre, which is under the Minister of National Education, provides numerous training workshops, conferences and seminars devoted to educational and prevention activities. The website of the Education Development Centre² shares information materials and publications concerning e.g. threats associated with the use of new communication technologies by pupils/students and research into the issue.

60. In projects implemented as part of the Digital Poland Operational Programme and targeting teachers, The standards of digital competence of teachers drawn up by experts of the Ministry of National Education also address issues related to legal provisions and principles of security for using resources available in the Internet. Enhancing the relevant competence of teachers translates into a more effective implementation of the core curriculum and higher digital competence of pupils/students.

61. Internet safety issues have been covered by the trends in the pursuit of the state's educational policy for several years, which is reflected in the measures taken by pedagogic supervision and teacher training centres.

Follow-up information relating to paragraph 16 (c)

62. The Minister of National Education introduced the obligation to carry out an educational and prophylactic scheme in every school in legal provisions on education from the school year 2017/2018. The activities included in the scheme and addressed to pupils/students, teachers and parents should be prepared on the basis of a diagnosis of the needs and problems occurring in a given school community. The educational and prophylactic scheme is adopted by the parents' council in consultation with the teachers' board. Thus, parents have a significant impact on schemes, projects, undertakings and initiatives including those implemented in cooperation with non-governmental organisations, in line with a previous definition of areas of intervention.

63. The objective of the above-mentioned actions is to provide pupils/students with the knowledge that all people have equal rights regardless of where they were born, what they look like, what religion they profess and what their material status is. Schools are obliged to respect human rights and the teaching content of educational subjects such as: history, ethics and civics concern directly the shaping of attitudes of tolerance, the issue of human rights and their protection and citizenship.

64. The Polish state subsidises in a consistent and stable manner projects of national and ethnic minority organisations e.g. for promoting their cultural achievements and contribution to the Polish cultural heritage, by financing the publications and press of the minorities, conferences and cultural events, including those addressed to the majority society. Such cultural events, held primarily at the local level, form a permanent part of the event calendar of a minority and its place of residence. Some of them have been held annually for 20–30 years, which helps build a positive image of national and ethnic minorities. A promotional campaign conducted by the Ministry of Internal Affairs and Administration since 2014 has also popularised the minority languages to some extent. The campaign materials and information are available to the public at: <http://www.jezyki-mniejszosci.pl/>.

Follow-up information relating to paragraph 16 (d)

65. The Radio and Television Act of 29 December 1992 (hereinafter "the Radio and TV Act"), Article 18(1) states as follows: "Broadcasts or other items must not encourage actions contrary to law and Poland's *raison d'Etat* or propagate attitudes and beliefs contrary to the moral values and social interest, in particular they must not include content inciting to hatred or discriminating on the grounds of race, disability, gender, denomination or nationality".

² Available at: <http://www.ore.edu.pl/>.

66. The provision cited mentions general standards for the content of programmes related to the respect for the legal order, public order, morality and also to the respect for individuals, their rights and freedoms and inherent human dignity.

67. In reference to the recommendation to monitor the media services as regards content inciting to hatred or escalating xenophobic sentiment, note that the implementation of the ban mentioned in Article 18(1) of the Radio and TV Act is controlled both by planned monitoring (i.e. control of selected TV and radio programmes planned for the calendar year in the monitoring schedule and covering seven days of the programme) and intervention monitoring (covering a given day or selected broadcast or commercial message) for the presence of forbidden content. Broadcasts are monitored for compliance with the bans defined in the Radio and TV Act on a continuous basis, regardless of a possible election campaign period.

68. If a broadcaster violates any of the above-mentioned bans, a fine is imposed on the broadcaster. The Chairman of the National Broadcasting Council (Polish: Krajowa Rada Radiofonii i Telewizji, KRRiT) exercises the powers in Articles 53(1) of the Radio and TV Act by imposing financial penalties on broadcasters for breaches in the programming operations concerning the scope defined in Article 18(1) of the Radio and TV Act. An example is provided by decision no. 3/DPz/2017 of 17 October 2017 to impose a financial penalty of PLN 100 thousand on Superstacja Sp. zo.o., after finding that a show “Krzywe zwierciadło” broadcast on 14 February 2017 on the programme of Superstacja contained discriminatory content and content inciting to hatred.

69. Another example of warning and prevention measures taken by the Chairman of the National Broadcasting Council is provided by the proceedings concerning the advertising spot of a clothing company broadcast in the programme of RMF MAXX in Włocławek. The spot contained content discriminating on the grounds of sex, in particular reinforcing stereotypes concerning the sexuality of women. The Chairman of KRRiT sent a letter of warning to the broadcaster and the broadcaster immediately took measures in whose consequence the advertiser changed the advertising slogan.

70. Recently, monitoring has not revealed any content inciting hatred on the grounds of race or nationality. Several such cases were recorded in the past and each one ended with the imposition of a high fine.

71. It should be added that KRRiT performs a quality control of broadcasts that target national and ethnic minorities and communities speaking a regional language and that are broadcast in the programmes of public broadcasters. The obligation to allow for the needs of national and ethnic minorities and a community speaking a regional language, which also includes the broadcasting of shows in the languages of those minorities, arises from the Radio and TV Act.

72. Such activities are most frequently performed as part of explanatory proceedings conducted in cases for complaints and appearances of representatives of national minorities. The monitoring is conducted primarily to verify the extent to which the broadcasts of public broadcasters allow for the diverse needs of the above-mentioned audience groups. It also enables the verification whether the broadcasts subject to monitoring meet the criteria for such messages identified in the position of the Joint Commission of the Government and National and Ethnic Minorities of 24 February 2010.

73. In the period of 2018–2019, KRRiT did not receive any complaint concerning broadcasts for national and ethnic minorities. On that account, KRRiT did not commission monitoring of broadcasts for these groups of viewers and listeners. The total lack of complaints in this period is the best proof that the findings of previous cases of monitoring and their implementation by public broadcasters have improved the quality of broadcasts and their current level of quality satisfies national and ethnic minorities.

74. KRRiT also engages in consultations with representatives of national and ethnic minorities and communities speaking a regional language with regard to their needs and demands concerning public media. For an example, the annual financial and programming plans of public media companies underwent social consultations. Draft plans were shared via the website of KRRiT and all associations and representatives of national communities could take part in the social consultation process for those plans which included broadcasts for national or ethnic minorities.

75. The representatives or members of KRRiT also attend meetings of bodies that address the issues of national and ethnic minorities and the programming of public media that targets minorities e.g. the Joint Commission of the Government on National Minorities and in the meetings of relevant Committees of the Sejm and Senate of the Republic of Poland. It should be underlined though that acting to give national and ethnic minorities an adequate access to the broadcasts addressed to them and allow for the needs of the above-mentioned groups therein, KRRiT may not decide on the programming in the public media, as this would infringe upon the broadcasters' autonomy in the performance of their statutory tasks, legitimised in the Radio and TV Act.

76. KRRiT is preparing a study on the freedom of speech and hate speech. It will be addressed to the public, broadcasters and journalists.

IV. Follow-up information relating to paragraph 18 (a) (a ban on establishing organisations that promote racial discrimination) of the concluding observations

77. The legal provisions in force and organisational solutions in place provide genuine possibilities to eliminate political parties that encourage racial discrimination from public life and public prosecutors take action to determine whether there are grounds for the State to interfere in such a manner.

78. Pursuant to Article 188(4) of the Constitution of the Republic of Poland, the examination of the conformity to the Constitution of the purposes or activities of political parties is within the cognisance of the Constitutional Tribunal. Pursuant to the provisions of the Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings before the Constitutional Tribunal, a political party may be subject to review as regards the conformity of its purposes or activities to the Constitution, using appropriate procedures. An application for the examination of the conformity to the Constitution of the purposes of the party – which are specified in the statute or program – is considered by the Tribunal in accordance with the rules and procedure for the consideration of applications concerning the conformity of normative acts to the Constitution.

79. For the consideration of applications concerning the conformity to the Constitution of the activities of political parties, the provisions of the Code of Criminal Procedure are applied accordingly and the burden of proving the non-conformity to the Constitution lies with the applicant who should produce or report evidence indicating the non-conformity (cf., Article 82(1 and 3) of the Act on the Organisation of the Constitutional Tribunal and the Mode of Proceedings before the Constitutional Tribunal). This application needs to include findings concerning the course of specific events that make up the unconstitutional activities of the party, and the Tribunal may commission the Public Prosecutor General to conduct an investigation with a specified scope in order to gather and document evidence (cf. Article 82(4) of the Act on the Organisation of the Constitutional Tribunal and the Mode of Proceedings before the Constitutional Tribunal).

80. Note that the Public Prosecutor General is an entity competent to lodge both above-mentioned types of application with the Constitutional Tribunal and also, under Article 42(3) of the Act on the Organisation of the Constitutional Tribunal and the Mode of Proceedings before the Constitutional Tribunal, is a participant of proceedings before the Tribunal in cases where other entities have lodged applications.

81. In the National Public Prosecutor's Office, the cases concerning the constitutionality of the purposes of activity of political parties are the responsibility (besides other tasks) of the Office for Constitutional Cases, which takes action on the basis of data obtained from the organisational units of the National Public Prosecutor's Office that monitor specific types of crime and on the basis of information from external entities.

82. Pursuant to Article 8(5) (2) of the Law on Associations Act of 7 April 1989, the entity competent to supervise associations is the county head (starosta) competent for the registered address of the association.

83. In line with Article 28 of the Association Law, if the activity of an association is found to be unlawful or in breach of the provisions of the charter concerning issues mentioned in Article 10(1), Article 10(a) 1 and 3) and Article 10b, the supervising body

may, depending on the type and degree of the irregularities found, request their remedy by a specified date, give the association authorities a warning or apply to a court to start proceedings under Article 29 of the Law on Associations.

84. The provision of Article 10b referred to in Article 28 of the Law on Associations pertains e.g. to gross or persistent breaches of legal provisions that justify action taken by the supervising body (county head). As arises from Article 29 of the Law on Associations, both the supervising body and a public prosecutor are competent to file an application for the dissolution of an association.

85. At the application of these bodies, a court of law may issue a warning to the association authorities, revoke the association's resolution which is unlawful or against the charter or dissolve the association if its activities feature gross or persistent breaches of law or provisions of the charter and there are no conditions to restore lawful activity.

86. In the context of this provision, it should be underlined that filing the application for the dissolution of the association falls first within the competence of the supervising body and only if the supervising body fails to take any action, within the competence of the public prosecutor.

87. The gross or persistent breaches of law or the charter by the association or the lack of conditions to restore lawful activity need to be documented to provide grounds for filing such an application with the court.

88. According to the interpretation of Article 29 of the Law on Associations, the dissolution of the association is the most restrictive measure the court may use; for less flagrant violations of law, the court may settle for a warning to the association authorities or revocation of the association's resolution which is unlawful or against the charter; it also has the possibility to oblige the association to remedy the irregularities by a set date and stay the proceedings. Thus, a possible application for the dissolution of the association shall be based on clear evidence testifying to the gross and persistent breaches of law by the association and its member and not simply on an indication of incidental cases of unlawful conduct.

89. The special nature of the procedure for delegalisation of associations is corroborated by the provision of Article 58(1) of the Constitution of the Republic of Poland, which states in principle that "the freedom of association shall be guaranteed to everyone". The provision of Article 58(2) of the Constitution of the Republic of Poland states that "Associations whose purposes or activities are contrary to the Constitution or statutes shall be prohibited (...)".

90. On account of the foregoing, a decision to file an application for the delegalisation of an association shall be preceded by proving that its activity actually violates law, which principally may only be done after relevant proceedings are conducted according to the provisions of the Code of Criminal Procedure in order to determine whether an offence has been committed in connection with the activity of the association.

91. Bearing in mind the above-mentioned regulations, when conducting preliminary proceedings for hate crimes, the public prosecutor should assess if there are circumstances that justify the initiation of procedures to delegalise parties or associations defined in the Act of 27 June 1997 on Political Parties and the Law on Associations Act of 7 April 1989.

92. It is necessary to determine whether action taken by people who have allegedly committed hate crimes are incidental or constitute a specific reflection of the purposes and assumptions adopted in the activities of particular organisations. Delegalisation measures will only be legitimate and effective if it is proved that the programmes of the said parties or associations refer to totalitarian methods and practices, Nazism, fascism or Communism or that the programmes provide for or permit racial or national hatred. If:

- Evidence is gathered that justifies, according to the public prosecutor, the application of the delegalisation of a political party due to a breach of Article 13 of the Constitution of the Republic of Poland, the materials and an appropriate letter should be sent to the Public Prosecutor General, who is competent to apply to the Constitutional Tribunal for the examination of the conformity of the political party's activities to the Constitution;

- Gross or persistent breaches of law by an association are found, both the supervising body (the county head competent for the place of registration of the association) and the district public prosecutor are competent to apply to a district court for the dissolution of the association. The district public prosecutor should notify the supervising body about findings that justify the delegalisation of the association, and if the supervising body fails to take action, file a relevant application with the district court.
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