

ECRI REPORT ON POLAND

(sixth monitoring cycle)



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FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI’s country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, those of the fourth round in the beginning of 2014, and those of the fifth round at the end of 2019. Work on the sixth round reports started at the end of 2018.

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

ECRI’s reports are not the result of inquiries or testimonial evidence. They are analyses based on information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on 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 ECRI report.

The sixth round country reports focus on three topics common to all member States: (1) Effective equality and access to rights, (2) Hate speech and hate-motivated violence, and (3) Integration and inclusion, as well as a number of topics specific to each one of them.

In the framework of the sixth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. Unless otherwise indicated, it covers the situation up to 30 March 2023; as a rule, developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fifth report on Poland on 20 March 2015, progress has been made and good practices have been developed in a number of fields.

By an Act of 7 July 2022, Article 256.1 of the Criminal Code was amended to the effect that the punishment for the promotion of totalitarianism, nazi, communist or fascist ideologies, or hatred based on national, ethnic, racial or religious differences, was increased, while the same Act introduced an explicit reference to hatred on the grounds of a victim's national, ethnic, racial, political or religious affiliation, as an aggravated circumstance listed in Article 53.2a of the Criminal Code, which courts will be obliged to take into account in their sentencing.

Police training about tackling antisemitism has recently been initiated, as provided by the Union of Jewish Communities, and the President of the Republic has on several occasions reacted with counter-speech against antisemitic hate speech.

ECRI further welcomes that Article 68 of the 2003 Act on Granting Protection to Foreigners within the Territory of the Republic of Poland was amended to include, as of 2015, victims of violence committed on the grounds of sexual orientation or gender identity as vulnerable persons eligible for special treatment in the proceedings for granting international protection, and that at least a few asylum seekers have been granted international protection on these grounds.

ECRI commends the city of Gdansk for its immigrant integration model, which was developed in 2015-2016 and which still successfully serves as a basis for the integration of foreigners in the municipality through actions in *inter alia* the areas of education, culture, health, employment, social assistance and housing, as well as measures against violence and discrimination. Linked to the integration model, Gdansk has created an immigrant council, a consultative body consisting of EU and third country immigrants, to advise the City in immigration and integration matters.

ECRI notes with satisfaction that progress was made in Roma children's attendance and graduation rates. The proportion of Roma children in so-called special schools for children with learning disabilities has dropped significantly.

ECRI notes with satisfaction the adoption of the Act of 12 March 2022 on the Assistance to Ukrainian Citizens in connection with the Armed Conflict in the Territory of that State. The Act provides Ukrainians who have fled the conflict with 18 months of legal residence in Poland as of 24 February 2022, as well as notably access to education, employment and health care.

ECRI welcomes these positive developments in Poland. However, despite the progress achieved, some issues give rise to concern.

ECRI is concerned about alleged political pressures applied to the Ombudsman institution until 2021, including by instrumentalising the budget of the institution for this purpose.

There is not much emphasis on promoting equality values in the national core curriculum for schools and in practice there is reportedly virtually no training for teachers about intercultural education. By contrast, there have been regular attempts to reduce education on LGBTI equality.

ECRI notes with concern the prevailing absence, in the Criminal Code, of sexual orientation, gender identity and sex characteristics among the enumerated grounds for hate speech and hate-motivated violence, which has resulted in significant underreporting of such incidents, in particular by hate speech victims.

The previously existing migration policy document, which provided a very good basis for successful integration and empowerment of foreigners, was repealed in 2016.

ECRI notes with concern the reported efforts by a municipality to prevent Roma residence in its territory.

ECRI deplores the amendments made to the Law on Granting Protection to Foreigners in the Territory of the Republic of Poland, passed on 14 October 2021 by the Polish Parliament, which severely compromises the right to asylum as it allows the authorities to disregard applications for international protection made by foreigners stopped immediately after having crossed the border outside of an official border crossing.

In this report, ECRI requests that the authorities take action in a number of areas and makes a series of recommendations, including the following:

The authorities should ensure access of migrants irregularly present in the country to basic

services, notably education and health care, and review legislation and policies to prohibit, in line with the “firewall principle”, private and public bodies from reporting migrants irregularly present in Poland to the immigration authorities, except in exceptional circumstances set in law and subject to judicial review.

The authorities should reverse the attempts to restrict age-appropriate education on LGBTI equality and sex education in schools and instead adopt a zero-tolerance policy against LGBTI-phobic attitudes and introduce LGBTI awareness-raising measures in the school environment, including by means of training teachers, and introducing designated textbooks on sexuality education.

The authorities should, as a matter of priority, initiate legislative amendments to add sexual orientation, gender identity and sex

characteristics as explicitly prohibited grounds in the relevant provisions of the Criminal Code.*

The authorities should ensure compulsory training about the effective investigation and prosecution of hate crime for police officers and prosecutors and make courses on the handling of hate crimes available to judges.

The authorities should further, as a matter of priority, adopt a national migration policy to constitute a basis for support measures for migrants, including refugees.*

The Polish authorities should, as part of the *“Programme for Social and Civic Integration of the Roma Community in Poland”*, take more decisive measures to improve the housing and living conditions of Roma, notably through mechanisms supporting and inciting/obliging local authorities to reach these goals.

* The recommendation in this paragraph will be subject to a process of interim follow-up by ECRJ no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. EFFECTIVE EQUALITY AND ACCESS TO RIGHTS

A. Equality bodies¹

1. According to the Act of 3 December 2010 on the Implementation of Certain Provisions of the European Union in the Field of Equal Treatment (Anti-Discrimination Act), the implementation of the principle of equal treatment is entrusted to the Commissioner for Human Rights (Ombudsman)² and the Government Plenipotentiary for Equal Treatment.³ The former is *de jure* independent, while the latter is not, being subordinate to the Prime Minister.
2. In its fifth report, ECRI noted that the provisions of the Anti-Discrimination Act are for the most part consistent with General Policy Recommendation (GPR) No. 2 on equality bodies to combat racism and intolerance as concerns the mandate of the Ombudsman.⁴ It nevertheless recommended giving the Ombudsman a clear mandate to deal with complaints concerning cases of racial discrimination between private individuals. There have been no major amendments in the relevant legislation since then.
3. During the former Ombudsman's regular term of office, politically motivated interferences were allegedly made to undermine his work. One such interference that was reported to ECRI was made in the form of a civil lawsuit against the former Ombudsman, launched by the Polish Public Television⁵ the independence of which has been seriously questioned in recent years.⁶ On 15 September 2020, before the election of a new Ombudsman by Parliament in July 2021, a group of MPs of the ruling Law and Justice (PiS) party filed a motion to the Constitutional Court concerning the examination of the constitutionality of the statutory extension of the term of office of the previous Ombudsman under which the latter continued to perform the duties of Ombudsman after the expiry of his term in September 2020. It has been alleged that this motion was politically biased.
4. At the same time, according to the official website of the Ombudsman institution,⁷ the previous Ombudsman's budget was reduced,⁸ reportedly partly as a consequence of his work in support of, for example, migrants, refugees and LGBTI people. According to the Polish authorities, however, the budget of the Ombudsman's Office has been increased in the past seven years. After the new Ombudsman took office in the second half of 2021, his Office budget allocations for operational and staff expenses were increased very significantly,⁹ which as such is a late but welcome development.

¹ The term "national specialised bodies" was updated to "equality bodies" in the revised version of GPR No. 2 which was published on 27 February 2018.

² Website of the Ombudsman: <https://bip.brpo.gov.pl/>, section on equal treatment: <https://bip.brpo.gov.pl/pl/rowne-traktowanie>.

³ Website of the Government Plenipotentiary for Equal Treatment: <https://www.gov.pl/web/rownetraktowanie>.

⁴ See ECRI's fifth report on Poland.

⁵ Joint Statement by ENNHRI and GANHRI in Support of Adam Bodnar, the Polish Commissioner for Human Rights, 20 February 2019 ([Link](#)). See also, in relation to the Polish Public Television, statement of 18 December 2015 of the President of the European Broadcasting Union.

⁶ See, in this connection, [Polish media laws: Government takes control of state media](#) (7 January 2016). See also the [press statement](#) of 18 December 2015 of the President of the European Broadcasting Union.

⁷ <https://bip.brpo.gov.pl/pl/content/budzet-rpo-na-rok-2021-%C2%A0informacja> (accessed on 23 February 2023).

⁸ The Ombudsman's 2021 budget for running ordinary expenses was 36, 48 million PLN, thus it was reduced by 620 000 PLN (equivalent to € 132.120,00), compared to the 2020 budget and making it lower than the 2013 budget in absolute terms.

⁹ In autumn 2021, after the election in July 2021 by Parliament of the new Ombudsman, the budget was increased in parts related to payments for employees of the Ombudsman's Office (an extra 1,7 million PLN for the incentive fund and additional sums of 316,000 PLN per month for salary increases and additional benefits). The budget for operational and staff expenses in 2022 was 49,78 million PLN and in 2023 57,7 million PLN.

5. ECRI is nevertheless concerned about allegations made by various independent interlocutors during its visit that the budget and other instruments were used as means of political pressure. It also heard reports of political pressure faced by the current Ombudsman. In this context, ECRI draws the attention of the authorities to paragraphs 3 and 28 of its GPR No 2, according to which equality bodies should have both *de jure* and *de facto* independence, which must not be put at risk by arbitrary or disproportionate reductions in their budget or by other political interference.

B. Inclusive education

6. The national core curriculum for schools does contain elements of equality values. However, overall there is not much emphasis on them, which has prompted the Ombudsman to ask the Ministry of Education, on several occasions,¹⁰ to put more emphasis on such values in education. The Polish authorities informed ECRI that inclusive education is expressively mentioned in annexes to a 25 July 2019 Regulation of the Minister of Science and Higher Education, concerning teacher training. According to the Polish Teacher's Union ZNP, there is virtually no training for teachers about intercultural education in practice.
7. The authorities have referred to a few annual teacher training courses by the Education Development Centre,¹¹ which support the teaching of pupils with a minority or migration background.
8. However, there are civil society reports about hate speech against migrant pupils in Polish schools, both by peers and teachers, with references to a 2020 finding by the Supreme Audit Office.¹² According to a report of the Campaign against Homophobia (KPH) NGO, 70% of young LGBTI people in Poland have experienced violence in schools. There are reportedly no systemic anti-bullying strategies or measures designed to address this issue.
9. The authorities have also explained to ECRI that schools and, if need be, municipalities are obliged to take action against bullying. If they cannot solve such situations themselves, the Voivodship school curator must be informed and is entitled to intervene by making specific recommendations. The responsibility of schools and municipalities in this regard was confirmed by a court decision in a case in which a self-declared homosexual pupil was bullied on LGBTI grounds.¹³
10. ECRI is pleased to note that education about the Holocaust is mandatory at elementary and post-elementary levels and information on the Jewish and Roma victims of the Holocaust is included in the school curriculum and, consequently, in school textbooks.¹⁴
11. However, civil society representatives indicated to ECRI that equality and inclusion issues are decreasingly discussed and promoted in public schools. Further, some non-profitable organisations and think tanks that purportedly defend "traditional values", such as the *Ordo Iuris* Institute for Legal Culture, actively encourage parents not to let their children participate in lessons on the topics of human rights and equality.

¹⁰ For example, see the letter of 1 March 2021 to the Minister of Education, available at https://bip.brpo.gov.pl/sites/default/files/Do_MEiN_educacja_rownosciowa_1.03.2021.pdf (in Polish).

¹¹ [Centre for Education Development – Ośrodek Rozwoju Edukacji](#)

¹² See [Kształcenie dzieci rodziców powracających do kraju oraz dzieci cudzoziemców - Najwyższa Izba Kontroli \(nik.gov.pl\)](#) (in Polish language).

¹³ [Judgment](#) of the Warsaw Court of Appeal of 17 November 2017 (in Polish Language).

¹⁴ United Nations, Committee on the Elimination of Racial Discrimination (2019), Ninety-ninth session, Summary record of the 2742nd meeting, § 35.

12. ECRI recommends that the authorities include mandatory training on human rights, equality and inclusion, respect for diversity, prevention of bullying and responses to prejudice and discrimination in the initial and ongoing training of all teachers and other education professionals.
13. ECRI is concerned to note that in the past few years, in contrast with ECRI's previous recommendations,¹⁵ there have been regular attempts to reduce education on LGBTI equality. Leading politicians have openly opposed such education in schools. For example, on 15 June 2019, the then presidential candidate of PiS, who was later re-elected President of the Republic of Poland, publicly signed a political declaration in the form of a "Family Charter" at a campaign event in Warsaw.¹⁶ One section of the Charter was entitled "Protection of children against LGBTI ideology". One of the President's promises was the prohibition of "propagating LGBT ideology" in public institutions.¹⁷
14. Similarly, on a legislative level, the Minister of Education and Science introduced a bill in early 2022, which, if adopted and promulgated, would have prohibited schools from using materials seen as promoting homosexuality. This proposed legislation (also known as "*Lex Czarnek*") would have taken discretionary power away from schools. Opponents feared that the law would have practically banned sex education.¹⁸ This bill was eventually vetoed by the President. A very similar legislative proposal, which became known as "*Czarnek II*", was introduced in autumn 2022 as an initiative by members of parliament. The amendments concerned were adopted by Parliament but again vetoed by the President.¹⁹ Parliament could override the veto with a 3/5 majority. The Polish Teachers' Trade Union ZNP opposed the bill. ECRI also learned that there was already a lot of pressure applied to headmasters and individual teachers, some of which reportedly stemmed from representatives of the Catholic Church, not to hold sexual education lessons.
15. In general, it appears that the Government has made attempts to tighten its grip on how schools are run and what is taught in them, thereby reducing the autonomy of individual schools to invite guest lecturers or choose their own school materials. In each Voivodship, there is a curator, who is appointed to implement the legislation in force and government policies. ZNP asked that sexual education in line with the standards advocated by the World Health Organisation (WHO) be introduced. However, ECRI notes with concern that the current trend is the opposite, with modern textbooks in this area being removed from classrooms.²⁰

¹⁵ ECRI (2015), Report on Poland, § 101.

¹⁶ See [Polish President issues campaign pledge to fight 'LGBT ideology', 12 June 2020, The Guardian](#). See also Charter (in Polish) at <https://www.kartarodzin.pl/>

¹⁷ Congress of Local and Regional Authorities of the Council of Europe (2021, May 17), The role of local and regional authorities with regard to the situation of LGBTI people in Poland, p. 8, § 26.

¹⁸ ILGA Europe (2022), Annual review of the human rights situation of lesbian, gay, bisexual, trans, and intersex people in Poland covering the period of January to December 2021.

¹⁹ On 22 December 2022.

²⁰ Further, the Council of Europe's Congress of Local and Regional Authorities has referred to the impact of the adoption of declarations against LGBT ideology and family charters on schools and curricula in Poland. It has further reported that although there have been schools in Poland that wanted to establish courses on tolerance, these were not accepted. At the same time, the NGO *Ordo Iuris* has been developing books for headmasters on "how to combat LGBT ideology". As a result, teachers are reportedly afraid to refer to sexual orientation and gender identity in class, being under pressure from headmasters and local authorities not to do so.

16. ECRI recommends that the authorities refrain from any attempts to restrict age appropriate education on LGBTI equality and sex education in schools and instead introduce LGBTI awareness-raising measures in the school environment by: i) providing initial and ongoing training for all teachers and school principals in primary and secondary education with suitable training on issues pertaining to sexual orientation, gender identity and sex characteristics and ii) addressing substantial questions on these issues in designated textbooks on sexuality education. Furthermore, a firm message of zero tolerance of LGBTI-phobic attitudes and behaviours should be conveyed to all education professionals interacting with pupils and parents.

C. Irregularly present migrants

17. There is no available data on the number of migrants who have been irregularly present in Poland. The Polish Border Guards provide statistical information²¹ on persons who have been identified as such in the context of control procedures, and in respect of migrants for whom administrative return decisions were issued.²² The authorities informed ECRI that those who have overstayed their visas or residence permits constitute the largest category.
18. Irregular border crossing and irregular stay as a rule constitute misdemeanours.²³ However, if the former is accompanied by violence, threats or deception, Article 264 of the Criminal Code applies and sanctions are more severe. The same article also refers to the facilitation of irregular entry, which is a punishable offence, irrespective of the grounds for such act. Article 264a of the Criminal Code criminalises the facilitation of irregular stay, but only where it is done for personal financial or other gain.²⁴ Although renting accommodation to migrants who are irregularly staying in Poland is not a criminal offence as such, there could be a risk of sanction based on the rules of facilitation of stay. In the same way, the provision of humanitarian assistance is not a criminal offence in itself, but it could result in a criminal sanction based on rules on facilitation of entry.²⁵
19. As regards access to health care, migrants who are irregularly present in Poland do not benefit from the Polish public health insurance and thus cannot access any type of healthcare free of charge, except for emergency care. In line with the law on medical treatment and doctors' oaths, there is an obligation to provide health care to anybody in an emergency situation, as well as health care linked to pregnancy. That said, the patients will be charged for it. In this regard, ECRI refers to the 2019 concluding observations adopted by the United Nations Committee on the Elimination of Racial Discrimination (CERD).²⁶
20. There is a general obligation for public health institutions to co-operate with the Border Guards, which at times creates confusion among medical staff, some of whom interpret it as an obligation to report the presence of migrants who are

²¹ <https://strazgraniczna.pl/pl/granica/statystyki-sg/2206.Statystyki-SG.html>

²² In 2020, a total of 10,972 foreigners were obliged to return following administrative decisions. In 2021, the number was 10,349²² In 2021, 12 264 foreigners were found to be irregularly employed, in 2020, 10432 and in 2019, 14727.

²³ Sanctioned by a fine according to Article 465 §1 item 1 of the Act on Foreigners and Article 49a of the Petty Offences Code respectively.

²⁴ Article 264a. § 1. Anyone, who in order to gain financial or personal benefits, enables or facilitates another person to stay on the territory of the Republic of Poland in violation of the provisions of law, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years. § 2. In exceptional cases, where the perpetrator has not achieved financial benefits, the court may apply extraordinary leniency, and even withdraw from sentencing.

²⁵ 2014, EU FRA, Annex: EU Member States' legislation on irregular entry and stay, as well as facilitation of irregular entry and stay: 21.

²⁶ In its concluding observations, issued on 24 September 2019, the CERD expressed its concern about the "multiple and intersecting forms of discrimination that undocumented migrant women face in accessing maternal health care" in Poland. The Committee recommended to remove "all financial barriers, as well as any legal, administrative, language or cultural barriers that impede access by undocumented migrant women to affordable maternal health care throughout pregnancy, including by prohibiting health care facilities and medical professionals from eliciting information from patients about their immigration status".

undocumented to immigration officials, while the law merely provides that border guards may reach out to health providers for specific information.²⁷ In practice, healthcare professionals frequently report irregularly present migrants to the immigration authorities, thereby prompting the initiation of return procedures.²⁸ Such practices naturally serve as disincentives for irregularly present migrants to seek medical care when it is needed.

21. As regards education, ECRI was informed that children of migrants who are irregularly present in Poland are entitled by virtue of law²⁹ to education and care in public kindergartens and schools on the same basis as Polish citizens.³⁰
22. As concerns labour protection, the authorities explained to ECRI that there is no duty to inform the immigration authorities about the presence of migrants who are irregularly present in Poland, with the exception of the labour inspectors who are obliged to inform the Border Guards thereof. There are also frequent joint inspections at workplaces by these two authorities. Irregularly present and working migrants can make claims in labour courts, for example about unpaid wages. Their position is nevertheless weak.³¹
23. ECRI recommends that the authorities ensure access of migrants who are irregularly present in Poland to basic services, in particular education and emergency and other necessary health care, and review the relevant legislation and policies to prohibit, in accordance with the “firewall” principle, public and private bodies from reporting migrants irregularly present in Poland to the immigration authorities, except in exceptional circumstances which are set out in law and subject to judicial review and an effective appeal right.

D. LGBTI equality³²

24. In the ILGA-Europe Rainbow Map and Index, Poland is ranked 44th amongst 49 European countries reviewed, with a mark of 13,07% in all areas examined.³³ According to a research conducted by FRA,³⁴ LGBTI people’s trust in authorities fell dramatically in the period 2016-2021 and remains markedly low, with Poland ranked worst in the EU in this regard for the third year in a row in 2022. With this in mind, ECRI is concerned by the atmosphere of hostility against LGBTI people that has been reportedly growing in recent years and accompanied with a progressive erosion of LGBTI people’s human rights.³⁵
25. A few positive developments were nevertheless observed since 2015. In particular, ECRI notes with satisfaction that elements of LGBTI equality³⁶ were included in a National Programme for Equal Treatment 2021-2030, adopted by the Polish

²⁷ <https://picum.org/covid-19-vaccines-undocumented-migrants-poland/>

²⁸ 15 June 2022 submission to ECRI by the Association for Legal Intervention, page 4.

²⁹ Article 165 of the 14 December 2016 Law on Education.

³⁰ For admission to a school, the legal residence status of the child’s parents and/or guardians is irrelevant. See National Integration Evaluation Mechanism (NIEM), The right to education: Access of children with migration experience to Polish schools of different levels: <http://www.forintegration.eu/pl/the-right-to-education-access-of-children-with-migration-experience-to-polish-schools-of-different-levels>

³¹ For matters related to employment, irregularly present workers can lodge a claim with the Labour Inspectorate. However, they are not a party to the procedure and may not appeal against the decisions the inspectorate issues. Irregularly present workers may further pursue a claim before a court. NGOs may represent them in the court proceedings in disputes stemming from contracts’ conformity with the Labour Code.

³² For terminology, see ECRI’s glossary available at <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/ecri-glossary>.

³³ <rainbow-map-index-2022-ranking.jpeg> (1200×2060) (ilga-europe.org)

³⁴ [A long way to go for LGBTI equality | European Union Agency for Fundamental Rights \(europa.eu\)](http://www.europa.eu). See also [ILGA-Europe](http://ilga-europe.org).

³⁵ See, for instance, [Memorandum](#) of 3 December 2020 on the stigmatisation of LGBTI people, Council of Europe’s Commissioner for Human Rights.

³⁶ The programme expressly refers to “homophobia”, “gender identity” and “sexual orientation”.

Government in May 2022, after a lengthy consultation process.³⁷ However, ECRI observes that equality data collection in relation to LGBTI communities is almost non-existent, which makes the development of suitable legislation and well-founded policies in this area very difficult.

26. ECRI recommends that the authorities establish a comprehensive system to collect consistent, reliable and disaggregated LGBTI equality data, according to international data collection standards and while respecting the principles of confidentiality, voluntary self-identification and informed consent.
27. ECRI notes that Article 68 of the 2003 Act on Granting Protection to Foreigners within the Territory of the Republic of Poland was amended to as of 2015 include victims of violence committed on the grounds of sexual orientation or gender identity as vulnerable persons eligible for special treatment in the proceedings for granting international protection.³⁸ Civil society representatives met by the ECRI delegation confirmed that a few asylum seekers have since been granted international protection based on those grounds in cases where return to their country of origin would have been likely to lead to imprisonment on the same grounds.
28. ECRI is also pleased to note that a national telephone helpline aimed at supporting LGBTI people was put in operation in October 2022. This helpline, open for four hours per day, is staffed by volunteers, assisted by professional psychologists and organisationally supported by the Gdansk-based LGBTI NGO Tolerado. ECRI considers it as a **promising practice**.
29. In the field of employment, discrimination based on sexual orientation is specifically prohibited under Articles 11³ and 18^{3a} of the Labour Code. However, the number of labour complaints on grounds of sexual orientation, gender identity and sex characteristics per year is only a single digit number, according to the authorities.³⁹ All such complaints linked to sexual orientation were considered ill-founded or no violation was found. Nonetheless, in a 2020 landmark judgment, the Warsaw Regional Court ruled that a transgender woman was discriminated against in her workplace due to her gender identity. The court, for the first time in Polish jurisprudence, confirmed that transgender persons are to be protected against discrimination on the grounds of “sex”.⁴⁰ The Prosecutor General, who is at the same time the Minister of Justice, subsequently challenged the decision by submitting an extraordinary appeal⁴¹ to the Supreme Court in 2021. The latter dismissed it in December 2022.⁴² In another, recent, case concerning dismissal from employment due to an employee’s sexual orientation and activism in support of LGBTI people, the applicant is seeking compensation from the former employer, the Polish public broadcaster *Telewizja Polska*.⁴³
30. The reporting period has further seen denial, on grounds of sexual orientation, gender identity or sex characteristics, of access to goods and services. In 2016, an employee of a printing house in Łódź refused to execute an order from the LGBT Business Forum, arguing that the company refused to promote LGBT movements.

³⁷ On 24 May 2022 the Council of Ministers adopted a resolution on the establishment of the National Action Programme for Equal Treatment for 2022-2030, submitted by the Government Plenipotentiary for Equal Treatment.

³⁸ Article 68(1)(10) and Article 68(2) of the Act.

³⁹ 2 in 2022; 3 in 2021; 4 in 2020; 7 in 2019 and 5 in 2017.

⁴⁰ [Historyczny wyrok sądu: osoby transpłciowe pod ochrona prawa w zatrudnieniu \(kph.org.pl\)](https://www.kph.org.pl/historyczny-wyrok-sadu-osoby-transpłciowe-pod-ochrona-prawa-w-zatrudnieniu)

⁴¹ Supreme Court judgment of 8 December 2022, case no. I NSNc 575/21 available at: <http://www.sn.pl/sites/orzecznictwo/OrzeczeniaHTML/i%20nsnc%20575-21-1.docx.html> (in Polish).

⁴² [Trans woman wins legal battle with justice minister at Poland’s Supreme Court | Notes From Poland](https://www.transgender.eu/trans-woman-wins-legal-battle-with-justice-minister-at-poland-s-supreme-court)

⁴³ In this case, following a request for a preliminary ruling, the Court of Justice of the European Union (CJEU) provided legal interpretation of Council Directive 2000/78/EC on equal treatment in employment and occupation. The judgment in this case (C-356/21) was issued by the CJEU on 12 January 2023 and was in favour of the dismissed person. [CURIA - Documents \(europa.eu\)](https://eur-lex.europa.eu/curia/doclist/curia/doclist-2023-01-12-2023) (see [ECJ rules against Polish workplace LGBTQ discrimination – DW – 01/12/2023](https://www.transgender.eu/trans-woman-wins-legal-battle-with-justice-minister-at-poland-s-supreme-court)).

The case was brought to court, which decided against the printing house, based on Article 138 of the Code of Petty Offences, a decision which, the Minister of Justice, in his capacity of Prosecutor General, called a dangerous precedent. Eventually the Minister in question lodged a cassation appeal to the Supreme Court, which the latter dismissed.⁴⁴ The Prosecutor General subsequently used his power to question the constitutionality of Article 138 of the Petty Offences Code before the Constitutional Court. The Constitutional Court, which independence is considered to have been compromised in recent years,⁴⁵ agreed with the Minister.⁴⁶ As a result, the Court of Appeal in Łódź quashed the sentence against the printing house employee and it discontinued the proceedings.

31. ECRI recommends that the authorities refrain from any attempts to undermine the effective application of legal provisions against discrimination in employment on the grounds of sexual orientation, gender identity and sex characteristics and instead promote codes of conduct for good practice in employment and equality plans in order to create a diverse working environment that encourages respect for all.
32. ECRI recalls that the Polish law does not provide for same-sex marriage or civil partnership. Recognition of same-sex marriages concluded abroad or of children of same-sex couples born abroad remain sensitive issues. However, on 16 February 2022, the Supreme Administrative Court issued a judgment in the // OSK 128/19 case, stating that a child born in Canada to a surrogate mother and parented by two men in a same-sex partnership, one of whom is a Polish citizen, has the right to Polish citizenship. The Polish authorities confirmed to the ECRI delegation during the visit to Poland that the birth certificate of a child born abroad to a same-sex couple will now be recognised.⁴⁷ At the same time, ECRI learned that, due to the lack of recognition of same-sex partnerships, same-sex partners cannot benefit from family reunification and that if a *de facto* partner dies, the surviving partner has no heritage rights or other contextual rights, such as choosing the place for the funeral. ECRI encourages the authorities to address this issue.
33. In the field of healthcare, the Polish authorities explained that in accordance with Article 3(1)(2) of the Act of 6 November 2008 on Patients' Rights and the Commissioner for Patients' Rights, the term "next of kin" encompasses a cohabitee or a person indicated by the patient, which means that a same-sex "partner" may be considered next of kin in a healthcare context.
34. That said, one of the most striking setbacks against LGBTI equality in Poland in the last few years was the adoption by more than one hundred municipal or regional councils of so-called anti-LGBTI resolutions. Some of these resolutions have taken the form of "Family Charters". Reportedly, the adoption of such charters was promoted by supporters of the ruling government coalition and some local council members were taken by surprise when the adoption of the charters was put on local council meeting agendas, without any prior consultation.⁴⁸
35. On 28 June 2022, the Supreme Administrative Court issued final judgments in four cases instituted by the Ombudsman concerning resolutions adopted by local councils, two of them declaring the municipality to be free from the so-called LGBTI ideology and the other about stopping what its initiators considered an "LGBTI

⁴⁴ See [judgment](#) on the Łódź printing case on the website of the Supreme Court (in Polish).

⁴⁵ See, in this connection, [Opinion](#) on the Act on the Constitutional Tribunal, adopted by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016).

⁴⁶ See [judgment](#) on the Łódź printing case on the website of the Constitutional Tribunal (in Polish).

⁴⁷ However, where applicable, only the biological mother or father of such a child will be included in official documents concerning the child.

⁴⁸ Report by the Council of Europe Congress of Local and Regional Authorities of Europe on the role of local and regional authorities with regard to the situation of LGBTI people in Poland, paragraph 33, 17 May 2021. Available at <https://rm.coe.int/the-role-of-local-and-regional-authorities-with-regard-to-the-situatio/1680a287d7>

ideology". All the resolutions had earlier been declared null and void and quashed by judgments of the voivodship administrative courts in Lublin, Warsaw, Gliwice and Kielce.⁴⁹ The cassation appeals filed by regional prosecutors, among others, were dismissed by the Supreme Administrative Court on 28 June 2022. By the time of ECRI's visit, administrative courts had annulled nine of the resolutions concerned. In one of these rulings, the administrative court in question argued that the adoption of such a resolution cannot be seen as *not* having a negative impact on LGBTI persons, and should therefore be regarded as discriminatory. By autumn 2022, many further resolutions of this kind had been cancelled by the local authorities themselves. ECRI is nevertheless concerned that over 30 resolutions were still in force at the time of its visit to Poland. ECRI invites the Polish authorities to do their utmost to contribute, through appropriate channels, to the cancellation of any such resolutions without further delay.

36. It appears from ECRI's findings during the visit that the rights to freedom of assembly and expression of people promoting LGBTI equality have also often been challenged. A number of local authorities imposed so-called preventive bans on LGBTI equality marches while citing security concerns in view of possible counterdemonstrations. Between 2018 and 2019, such preventive bans were adopted in seven cities. After interventions made by the Ombudsman and following relevant court decisions, the marches were eventually allowed to go ahead, with much delay.⁵⁰ Furthermore, instances of police failure to adequately protect LGBTI equality marchers against LGBTI-phobic violence during such events, as was the case in Białystok and Lublin, may deter many LGBTI people to exert their right to freedom of assembly.
37. It is also of concern to ECRI that people who speak out and openly oppose homophobia, biphobia and transphobia are said to be the subject of retaliatory measures by public authorities, including in the form of criminal charges that have escalated into years of gruelling and costly trials that gradually exclude them, or compel them to withdraw, from an already shrinking space for civil society promoting LGBTI equality.⁵¹
38. ECRI recommends that the authorities refrain from any action against civil society actors promoting LGBTI equality and make every effort to ensure the safe organisation of LGBTI assemblies, including LGBTI equality marches.
39. There is no provision in Polish law concerning legal gender recognition of transgender persons. At the same time, Article 189 of the Code of Civil Procedure makes legal gender recognition possible by means of a legally binding judgment, which provides a legal basis for a change of sex and name on birth certificates and for altering national identification numbers (PESEL).
40. However, to achieve legal gender recognition in court, a transgender person's parents must be sued by the applicant according to the logic that they are responsible for having registered the erroneous sex of the applicant at birth.⁵² ECRI notes that courts usually rule in favour of applicants for legal gender recognition and are reportedly often sympathetic towards applicants. This procedure, which requires the presentation of relevant medical and psychological records, is costly and may be traumatising for both applicants and their parents. ECRI strongly encourages the authorities to review the current legislation with a view to securing

⁴⁹ Decisions of 6 August, 15 July, 14 July and 11 September 2020, respectively.

⁵⁰ Page 23 of a July 2022 report by Amnesty International available at [Poland: "They Treated Us Like Criminals": From Shrinking Space to Harassment of LGBTI Activists - Amnesty International](#)

⁵¹ Report by Amnesty International, July 2022, p. 6, available at [Poland: "They Treated Us Like Criminals": From Shrinking Space to Harassment of LGBTI Activists - Amnesty International](#)

⁵² If both parents are deceased, the responsible guardian can be sued, or as has happened in a few cases, the head of the relevant registry office.

a quick, transparent, and accessible process by which transgender people can obtain legal gender recognition without any abusive requirements.

41. During the visit, it has been brought to the attention of ECRI that intersex children face discrimination and condescending treatment, not only by peers in school, but also by, for example, teachers and priests. Health care for intersex people in Poland focuses on children. Surgeries on very young children are carried out without proper safeguards and often without adequate information being provided to their parents.
42. According to ECRI's civil society interlocutors, more than half of the surgeries performed in recent years on children with so-called variations of sex characteristics were not therapeutically necessary. Furthermore, there are no healthcare facilities that would provide specialised care needed by intersex adults, including as regards reparative care in cases of ill-advised earlier surgeries. Many medicines used by intersex people are not covered by the public health insurance.
43. ECRI recommends that the authorities take action to prevent intolerance and discrimination against intersex persons, in particular children. These efforts should entail i) the introduction of specific legislation prohibiting medically unnecessary sex-“normalising” surgery and other non-therapeutic treatments until such time as the intersex child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent, ii) the development of guidelines and training on intersex equality rights for relevant professionals, especially those coming into contact with intersex children, such as teachers and health care professionals, iii) encourage religious leaders at all levels to avoid fuelling interphobia and prevent intolerance and discrimination against intersex children and iv) the dissemination of relevant materials to the people concerned, such as guides for parents of intersex children.

II. HATE SPEECH AND HATE-MOTIVATED VIOLENCE

A. Hate speech⁵³

44. The most relevant provisions on combating hate speech in the Criminal Code (CC) are Article 119 (violence and unlawful threat),⁵⁴ Article 126a (public approval of or incitement to offences),⁵⁵ Article 256 (propagation of fascism or totalitarianism)⁵⁶ and Article 257 (insulting a group or individuals)⁵⁷ and to some extent Article 258 (organised criminal group and association).⁵⁸ The relevant criminal provisions were modified by an Act of 7 July 2022, whereby Article 256.1 was amended to the effect that the punishment for the promotion of totalitarianism, Nazi, communist or fascist ideologies, or hatred based on national, ethnic, racial or religious differences, was increased.⁵⁹ The same Act introduced an explicit reference to hatred on the grounds of a victim's national, ethnic, racial, political or religious affiliation, as an aggravated circumstance listed in Article 53.2a CC, which courts will be obliged to take into account in their sentencing.⁶⁰ ECRI welcomes this development.
45. According to the Polish authorities, Article 216 CC on insults may also be used to prosecute hate speech of a criminal nature.⁶¹
46. Of further relevance is Article 18 of the 1992 Broadcasting Act, as amended in November 2021, which prohibits content that incites hatred or violence or discriminates on the grounds of *inter alia* sex, colour, ethnic or social origin, genetic characteristics, language, religion or belief, citizenship, membership of a national minority or sexual orientation. The same applies to on-demand audio-visual services (Article 47h of the Act) and to self-generated materials that can be posted online (Article 47o). The observance of Article 18 requirements is monitored and if

⁵³ See definitions of hate speech and hate crime in [ECRI's Glossary](#).

⁵⁴ § 1. Anyone who uses violence or makes an unlawful threat towards a person or a group of people on national, ethnic, racial, political or religious grounds, or because of a lack of religious belief, shall be liable to imprisonment for a term going between 3 months and 5 years.

⁵⁵ Anyone who publicly incites others to commit an act specified in Articles 118, 118a, 119 § 1, or Articles 120 to 125, or who publicly approves the acts specified therein, shall be liable to imprisonment for a term going from 3 months to 5 years.

⁵⁶ § 1. Anyone who publicly propagates a fascist or other totalitarian system or incites to hatred based on national, ethnic, racial or religious differences or for lack of religious affiliation shall be liable to a fine, community sentence or imprisonment for a maximum term of 2 years. In its judgment of 8 February 2019 (case ref. no. IV KK 38/18), the Supreme Court clarified what in its view is the correct interpretation of the concept of "hate speech" in the criminal context and it confirmed that the crime defined in Article 256(1) of the Criminal Code is to be considered hate speech.

§ 2. Anyone who, for the purpose of disseminating, produces, records, or imports, acquires, stores, possesses, presents, carries or sends any printed matter, recording or any other item containing the content specified in § 1, or bearing fascist, communist or other totalitarian symbolism shall be liable to the same penalty.

§ 3. The offender does not commit the offence specified in § 2 if he or she has committed the act for artistic, educational, collector's or scientific purposes.

§ 4. When sentencing for the offence specified in § 2, the court shall order the forfeiture of the items referred to in § 2 even if they are not the property of the offender.

⁵⁷ Anyone who publicly insults a group of individuals or a specific individual because of national, ethnic, racial or religious affiliation, or because of lack of religious affiliation, or for these reasons violates the personal inviolability of another individual shall be liable to imprisonment for a maximum term of 3 years.

⁵⁸ For a more thorough analysis of this legislation, see ECRI's fifth report on Poland, paragraphs 3-13 and 27-28.

⁵⁹ Following the amendments, which entered into force on 14 March 2023, the maximum imprisonment penalty for breaches of this paragraph was increased from two to three years.

⁶⁰ ECRI in § 13 of its fifth report on Poland recommended the addition to the CC of racial motivation as an aggravating circumstance.

⁶¹ §1: Anyone who insults another person in his or her presence, or even in his or her absence, but publicly, or with the intent that the insult reaches such person, shall be liable to a fine or a community sentence. § 2: Anyone who insults another person via mass media shall be liable to a fine, community sentence or imprisonment for a maximum term of one year. Note should nevertheless be taken that, in one case, the use of Article 216 CC led to a violation of Article 10 of the European Convention on Human Rights on the right to freedom of expression (see judgment of the European Court of Human Rights of 5 July 2016 in the case of [Ziembinski v. Poland](#) (no. 2), final on 5 October 2016).

a broadcaster violates it, a warning may be issued or a fine imposed by the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji – KRRiT*).⁶²

47. It is difficult to distinguish hate speech from hate crime in available national statistics. Nonetheless, there were 668 incoming cases under Article 256 (1-2) CC registered by the Prosecution Service in 2021, with 137 indictment bills and 64 persons convicted in that year. The corresponding numbers were 613, 100 and 30 for 2020 and 640, 110 and 49 for 2019. The corresponding numbers for Article 257 CC were 977, 293 and 137 in 2021, 781, 207 and 96 in 2020 and 789, 268 and 157 in 2019.⁶³
48. Article 13 of the Constitution prohibits organisations promoting totalitarian regimes or inciting racial hatred.⁶⁴ ECRI is pleased to note that, following its previous report on Poland, on 9 April 2018, the District Prosecutor's Office in Gliwice filed a motion to the court to dissolve an association promoting racism, namely the Pride and Modernity Association (*Duma i Nowoczesność* in Polish) based in Wodzisław Śląski. The District Court in Gliwice allowed the application and by decision of 7 August 2019, it dissolved this association, at the same time ordering its liquidation. The decision is final. Prosecutors have also conducted enquiries into whether grounds existed to ban the *March of the Independence Association* and *All-Polish Youth*.⁶⁵ During the proceedings, no factual or legal grounds were nevertheless found to petition the court to prohibit these organisations.⁶⁶
49. In 2017, the Ombudsman brought to the attention of the Minister of the Interior and Administration, and to that of the Prime Minister, what he saw as a need to create effective tools for reducing the phenomenon of hate speech on the Internet, which took the form of online statements that promoted racist, fascist or other ideologies and incited to hatred or insulting particular persons or groups of people on the grounds of their citizenship, ethnicity and religion or lack of religious affiliation. At the same time, the Ombudsman issued 20 recommendations as to how to tackle such hate speech, notably online. In February 2018, the Prime Minister appointed an Interministerial Team for Combating Fascism and other Totalitarian Systems as well as Incitement to Hatred due to national, ethnic, racial or religious differences or lack of religious denomination. However, in May 2018, the Ombudsman was informed by the Minister of the Interior and Administration that hate speech on the Internet was beyond the mandate of the Interministerial Team.⁶⁷
50. In the reporting period, and especially during election periods, there have been numerous examples of hate speech by political leaders and other politicians, who are part of, or affiliated with, the ruling government coalition. For example, in 2015 prior to the October elections, during the parliamentary campaign, the leader of PiS (and former Prime Minister) alleged that refugees should not be allowed to enter Europe because they are carrying “various parasites and protozoans, which

⁶² Its relevant competencies are defined in Article 53(1) of the Radio and TV Act.

⁶³ Complaints may be submitted either to the police or directly to prosecution services. Thus, prosecutors examine cases submitted by the police, cases submitted by the public and cases identified *ex officio* by the prosecutors.

⁶⁴ For more details, see information submitted by Poland on its follow-up to CERD's concluding observations on Poland's 22-24th periodic report, paragraph 79, available at [CERD/C/POL/FCO/22-24 \(undocs.org\)](https://undocs.org/CERD/C/POL/FCO/22-24)

⁶⁵ In its 2019 concluding observations, the CERD urged the Polish authorities to ensure effective enforcement of the laws declaring illegal parties or organisations which promote or incite racial discrimination, such as the National Movement, the National Radical Camp, All-Polish Youth, Falanga, Szturmowcy, Niklot, the National and Social Congress, Autonomous Nationalists, Pride and Modernity Association, and the Polish chapter of Blood and Honour.

⁶⁶ Paragraphs 30-31, page 15 of the Observations and remarks of the Commissioner for Human Rights on Poland's implementation of recommendations contained in point 10 (a), point 12, point 16 (b), (c) and (d) and point 18 (a) of the CERD's concluding observations.

⁶⁷ In June 2020, the Ombudsman reiterated his recommendations in a letter to the Prime Minister and expressed disappointment about the limited mandate of the Interministerial Team.

do not affect their organisms, but could be dangerous in Poland”.⁶⁸ During the election campaign for the 2019 parliamentary elections, LGBTI communities were often targeted by leading politicians. The prevailing absence in the Criminal Code of sexual orientation, gender identity and sex characteristics among the enumerated grounds for hate speech means that any such abuse can hardly be considered as a criminal offence. This in turn is likely to result in serious underreporting of anti-LGBTI hate speech incidents.

51. ECRI recommends, as a matter of priority, that the Polish authorities initiate legislative amendments to add sexual orientation, gender identity and sex characteristics as explicitly prohibited grounds to the relevant provisions of the Criminal Code.
52. According to Amnesty International, people in positions of power in government and other influential public figures have intentionally negatively portrayed LGBTI people as a threat to “family values”, “the Catholic faith” and “public order”.⁶⁹ These political leaders made statements framing gender and LGBTI issues as an “ideology”, thereby delegitimising LGBTI persons as belonging to communities. The Polish President himself referred to it as an “ideology” and as an “ideology of evil”. On the other hand, there are several examples showing that the same President called for respect and spoke against xenophobia or religious intolerance. The vast majority of these statements could be considered as counter-speech against antisemitism.
53. In the context of antisemitic hate speech and other forms of hate speech based on religion, civil society interlocutors expressed the view that all necessary legal provisions exist. They also claimed that these were not consistently implemented. However, ECRI is pleased to note that in October 2022, the Union of Jewish Communities in Poland opened an online platform for reporting antisemitic incidents. On a similarly positive note, police training about antisemitism has recently been initiated and provided by the Union of Jewish Communities. In Katowice, the Jewish community co-operates closely with the Muslim and Orthodox communities to fight hate speech and hate crime. ECRI considers such inter-faith co-operation as a **good practice**.
54. In the political sphere, ECRI regrets to note that there is no code of conduct against hate speech in either the lower or the upper house of the Parliament. There are nevertheless general rules against offensive statements. The respective ethics committees of the two houses may examine such cases. If the defendant MP is found guilty of offensive statements, and if s/he is not willing to apologise, the relevant ethics committee may adopt resolutions against the offending MP. However, the MP concerned may appeal to the Presidium of the Sejm or the Senate. According to civil society interlocutors, sanctions of the kind are rather ineffective as appeals from members of the ruling party are very likely to be upheld in the Sejm, even though the publication of such resolutions at times got disseminated in the media, which happened, for example, when the PiS party leader (and former Prime Minister) mocked transgender people.⁷⁰
55. According to various interlocutors, hate speech tends to be more frequent during election campaigns. ECRI notes that Article 111 of the Electoral Code provides for an expedited procedure to examine defamation allegations associated with electoral agitation. Applications are examined in non-contentious proceedings in

⁶⁸ Polish opposition warns refugees could spread infectious diseases. <http://www.reuters.com/article/us-europe-migrants-poland-idUSKCN0S918B20151015>.

⁶⁹ Report by Amnesty International, July 2022, p. 6, available at [Poland: “They Treated Us Like Criminals”: From Shrinking Space to Harassment of LGBTI Activists - Amnesty International](#)

⁷⁰ [Ruling party leader reprimanded for transgender comments – The First News](#)

order to result in a ruling, rather than a judgment. Complaints must be addressed within a total of 48 hours.⁷¹

56. ECRI recommends that public figures, such as high-level officials, politicians, and religious, economic and community leaders, be strongly encouraged to take a prompt, firm and public stance against the expression of racist and LGBTI-phobic hate speech and react to any such expression with strong counter-hate speech messages and alternative speech, and promote understanding between communities, including by expressing solidarity with those targeted by hate speech. Elected bodies and political parties should adopt appropriate codes of conduct that prohibit the use of hate speech, call on their members and followers to abstain from engaging in, endorsing or disseminating it, and provide for sanctions. In this respect, ECRI refers to its General Policy Recommendation No. 15 on combating hate speech, Recommendation CM/Rec (2022)16 of the Committee of Ministers of the Council of Europe on combating hate speech and the Charter of European political parties for a non-racist and inclusive society as endorsed by the Parliamentary Assembly of the Council of Europe in its Resolution 2443 (2022).
57. In the area of criminal justice, a number of interlocutors shared their opinion with the ECRI delegation during the visit that investigations into and prosecution of hate speech cases are sometimes politically influenced and biased, with the recent, notable, exception of antisemitic hate speech cases.⁷² For example, cases in which members of right-wing groups supportive of the ruling government coalition are accused of hate speech of a criminal nature frequently seem to be discontinued or sentenced mildly, if at all. Conversely, according to the same interlocutors, members of other groups, such as LGBTI activists, appear to be prosecuted on weak grounds (see paragraph 37). Numerous examples of such allegedly politically influenced legal procedures are included in a publication by the independent prosecutor association *Lex Super Omnia* (LSO).⁷³ ECRI is deeply concerned about any such political interference in the work of prosecutors in preventing and combating hate speech of a criminal nature and strongly encourages the competent authorities to examine seriously all of these allegations.
58. As concerns the media, ECRI notes that the Office of the Commissioner for Human Rights received a complaint in 2020 from the Roma Association in Poland regarding the recurrent media practice of stating the citizenship or ethnic origin of criminal suspects or crime perpetrators when they were of Roma origin. Similarly, the Office of the Commissioner for Human Rights in 2019 and 2020 received complaints concerning incitement to hatred on public television. The Ombudsman approached the Media Ethics Council about these complaints⁷⁴ and the latter did issue a statement against such media practices.⁷⁵ Muslims have also been victims of negative portrayal in Polish media, as shown by a report by the Ombudsman published in 2017.⁷⁶ The authorities provided ECRI with an account of seven investigations conducted into complaints submitted to the National Broadcasting Council about alleged racist content in the period 2015-2022. At the same time, the relevant authorities did not consider any of these complaints substantiated. ECRI invites the authorities to encourage media professionals to foster ethical

⁷¹ Within 24 hours by the first instance court and within an additional 24 hours in an appeals court if need be.

⁷² [In first, Polish priest sentenced on charges of spreading antisemitic hate speech - Jewish Telegraphic Agency \(jta.org\)](https://www.jta.org/)

⁷³ [Manifestations of the erosion of the law enforcement system – LSO Report on the Prosecution of hate crimes of the Polish prosecutor's office in the years 2016 – 2022 – Stowarzyszenie Prokuratorów "Lex super omnia" \(lexso.org.pl\)](https://www.lexso.org.pl/)

⁷⁴ Paragraphs 16-24, pages 11-13 of the Observations and remarks of the Commissioner for Human Rights on Poland's implementation of recommendations contained in point 10 (a), point 12, point 16 (b), (c) and (d) and point 18 (a) of the Concluding remarks of the Committee on the Elimination of Racial Discrimination presented after examining the joint XXII and XXIV periodic report submitted by Poland (CERD/C/POL/CO/22-24).

⁷⁵ Available at <https://www.rem.net.pl/data/20201120.pdf> (in Polish).

⁷⁶ https://www.rpo.gov.pl/sites/default/files/The_Negative_Portrayal_of_Muslims_in_the_Polish_Press.pdf

journalism and avoid provoking prejudice and making any unnecessary references to personal characteristics or status, in accordance with paragraph 7.g. of ECRI's General Policy Recommendation No. 15 on combating hate speech and paragraph 41 of Recommendation CM/Rec(2022)16 of the Council of Europe's Committee of Ministers.

59. Anti-Muslim hate speech does occur in Poland, especially against their Muslim community leaders and in connection with terrorist attacks in other countries. The police have proved reluctant to investigate verbal attacks and threats against Muslims, which discourages further reporting of such incidents. On a positive note, the Mayor of Poznan has engaged in counter-speech in reaction to hate speech against Muslims.
60. In the field of sport, several interlocutors told the ECRI delegation during the visit that racist, including antisemitic, chants at football matches have grown in frequency, especially in lower-level football leagues, but that the police tend to consider it as hooliganism rather than racism. At the same time, according to the Polish authorities, a number of sport associations⁷⁷ have adopted regulations or codes of conduct against hate speech and discrimination, violations of which may lead to various penalties, ranging from disqualification from matches to financial ones. These rules may be applied to members, players or fans.

B. Hate-motivated violence

61. An act consisting of the use of violence against a group of people or an individual person on the grounds of their national, ethnic, racial or religious affiliation or because of lack of religious affiliation, is penalised by Article 119 of the Criminal Code. Furthermore, Article 118a prohibits *inter alia* severe persecution of a group of people for reasons recognised as inadmissible under international law, in particular for political, racial, national, ethnic, cultural or religious reasons or due to the lack of religious affiliation, or due to belief or sex, thereby depriving them of their fundamental rights. Cases concerning minor forms of violence, consisting in breaching the bodily inviolability of an individual person because of national, ethnic, racial or religious affiliation, or because of lack of religious affiliation are criminalised by Article 257. The most recent changes in the criminalisation of acts of hatred took place in 2016 when a new Article 126c was incorporated into the Criminal Code, criminalising the preparation of the crimes specified in Article 118a of the Code.
62. The authorities have explained to ECRI that Article 288 of the Criminal Code on destruction of or damage to property (vandalism) may also be relevant in a hate crime context, if the property damaged belongs to, for example, a religious group.
63. Neither paragraph 1 of Article 118 of the Criminal code prohibiting homicide, nor paragraph 1 of Article 119 prohibiting violence, nor paragraph 2 of Article 255 prohibiting incitement to crime, have been amended to include sexual orientation or gender identity among the grounds for hate crime, despite ECRI having recommended the addition of these grounds in its fifth report. As concerns criminal legislation, reference is made in this regard to the recommendation made in paragraph 51.
64. According to data submitted by the Polish authorities to OSCE/ODIHR, there were 826 cases of hate crime recorded by police services in 2020, out of which 374 were prosecuted and 266 resulted in a sentence by court. The corresponding numbers were 972, 432 and 597 in 2019 and 1 117, 397 and 315 in 2018. According to the authorities, hate crimes constitute less than 1% of all crimes recorded in the country.

⁷⁷ The Polish Football Association, the Polish Biathlon Association, the Polish Volleyball Federation and the Polish Basketball Association.

65. The authorities informed ECRI that, in each regional public prosecutor's office, at least one district prosecutor is responsible for the conduct of proceedings in hate crime cases. As a result, there are in theory about one hundred prosecutors in Poland who are specialised in conducting proceedings in relation to hate crimes. The authorities indicated that such training for judges and prosecutors continue. A 2014 Prosecutor General's written order provides guidance as to how to investigate hate crimes. However, several civil society sources claim that the 2014 order was not properly implemented.
66. According to the independent prosecutor association LSO, the management of the Prosecution Service has systematically deprioritised the investigation and prosecution of hate crimes since March 2016 and there are no longer compulsory training courses about hate crimes for prosecutors who are assigned such cases. Neither are there any optional courses on hate crimes that prosecutors or judges could attend. Similar to the prosecution of hate speech, hate crime cases, which are indeed often based on the same articles of the Criminal Code, are frequently discontinued despite the apparent presence of clear evidence of criminal offences.⁷⁸
67. ECRI recommends that the authorities ensure compulsory training about the effective investigation and prosecution of hate crime for police officers and prosecutors and make courses on the handling of hate crimes available to judges.
68. The Victim Support Fund, managed by the Ministry of Justice, address the needs of crime victims. That said, it does not concern hate crime victims specifically.⁷⁹ ECRI was informed that victims of hate crime receive legal advice, including as regards their right to apply for compensation. Social and legal counselling, as well as medical and psychological support may, depending on the circumstances, be offered to victims of crime, including victims of hate crime. Similarly, victims of hate crime may profit from the 24/7 assistance hotline for victims of crime. ECRI encourages the authorities to further develop support mechanisms that address the needs of hate crime victims, in co-operation with relevant civil society organisations.

III. INTEGRATION AND INCLUSION

A. Migrants

69. In its fifth report on Poland, ECRI observed that in 2012, the Polish Council of Ministers issued a document entitled "Polish migration policy – the current position and action requested",⁸⁰ setting such objectives as transforming integration from a system of welfare benefits into a system enabling foreigners to achieve self-sufficiency; increasing co-operation and consultation with immigrant communities and non-governmental organisations; the provision of information by the state on residence and employment conditions; developing welcome programmes enabling newly arrived migrants to find their way around local institutions and familiarise themselves with legal procedures or with the culture of everyday life at local level; envisaging the possibility of granting the right to vote at local level to foreigners holding an indefinite residence permit; and training civil servants, police officers and border guards in the specific aspects of working with foreigners.
70. The "Polish migration policy" document was subsequently translated into specific measures to be adopted by the various ministries concerned. The outcome of this was an "implementation plan", adopted by the Council of Ministers in 2014. The

⁷⁸ Prosecution of hate crimes in practice of the Polish prosecutor's office in the years 2016-2022 – manifestation of the erosion of the law enforcement system. Published by Lex Super Omnia in December 2022, page 4.

⁷⁹ Summary of other stakeholder's submissions on Poland, Paragraph 19. Available at: [Human Rights Documents \(ohchr.org\)](https://www.ohchr.org/)

⁸⁰ Ministerstwo Spraw Wewnętrznych, Departament Polityki Migracyjnej, Zespół do Spraw Migracji, *POLITYKA MIGRACYJNA POLSKI – stan obecny i postulowane działania*, Dokument przyjęty przez Radę Ministrów w dniu 31 lipca 2012 r. ([Link](#)).

document described and assessed the degree of implementation of nearly two hundred recommendations contained in the migration policy.

71. The above Migration Policy document, which had provided useful guidance, was repealed in 2016 by the Prime Minister. According to the Polish authorities, work started soon after to prepare a new migration policy document and a draft was ready in 2021. However, given the situation at Poland's border with Belarus in the second half of 2021 and the flow of people fleeing the war in Ukraine in 2022, it was considered that the document was not adequate for meeting these new circumstances. As a result, it has not been presented for adoption. The absence of such an official migration policy providing a national framework, and of any related implementation plan, makes the conceptualisation of local-level immigration or integration plans more difficult. A national framework would facilitate the provision and financing of a number of services for migrants, including migrants' access to health care and social services.
72. ECRI recommends, as a matter of priority, that the Polish authorities develop and adopt a national migration policy, which will not only be helpful in respect of integrating people who took refuge in Poland as a result of Russia's aggression against Ukraine, but also other migrants with various statuses and purposes of stay in the country. In developing such a national policy, the Polish authorities are invited to seek inspiration from the Council of Europe's Model Framework for an Intercultural Integration Strategy at the National Level. If necessary, Council of Europe support should be sought.
73. Despite the absence of a national migration and integration framework, there are some truly commendable initiatives in this area at the local level, notably in the City of Gdansk. In 2015-2016, the City prepared an immigrant integration model, which still successfully serves as a basis for the integration of foreigners in the municipality. The model foresees actions in support of integration in the areas of education, local communities, culture, health, employment, social assistance and housing, as well as against violence and discrimination.⁸¹ Furthermore, Gdansk has created an Immigrant Council, a consultative body consisting of EU and third country immigrants to advise the City in immigration and integration matters. It convenes about once a month. ECRI commends the City of Gdansk for its successful Immigrant Integration Model, including the Immigrant Council, and considers both the Model itself and the Immigrant Council **good practices**.
74. Recognised refugees and persons granted subsidiary protection are the only beneficiaries of individual integration programmes.⁸² The programmes last up to 12 months and provide specialised counselling to beneficiaries of international protection. The main part of the programme consists of financial support aimed at covering living costs and paying for language classes. However, the provision of civic education or vocational training is not included.⁸³ ECRI encourages the Polish authorities to introduce civic education and, where appropriate, vocational training into individual integration programmes.

Education

75. According to the Polish legislation,⁸⁴ foreign students, including the children of asylum seekers, benefit from education and care in all types of public preschools and schools until they reach 18 years of age or until they graduate from secondary/post-secondary schools, under the same conditions as those applicable

⁸¹ For details of the Immigrant Integration Model, see [Oficjalny portal miasta Gdańska \(www.gdansk.pl\)](http://Oficjalny portal miasta Gdańska (www.gdansk.pl))

⁸² Ministerstwo Rodziny, Pracy i Polityki Społecznej, Indywidualny program integracji uzgadniany zdalnie (dla cudzoziemca) ([Link](#)). The programmes are currently regulated by the 2004 Act on Social Assistance of the Ministry of Labour and Social Policy.

⁸³ European Commission, European Website on Integration, Governance of migrant integration in Poland ([Link](#)).

⁸⁴ Article 165 of the 2016 Law on Education.

to Polish citizens.⁸⁵ Foreigners subject to compulsory schooling who do not possess a sufficient level of Polish to attend regular classes are entitled to additional free Polish courses comprising not less than two hours per week for a maximum period of 24 months. Additional preparatory Polish language classes may be offered to foreign students, if the management of the school so decides.⁸⁶ However, according to ECRI's civil society interlocutors, such additional Polish language classes are not organised in some schools, or they are not adopted to the needs of the foreign pupils and students. ECRI invites the competent authorities to review the offer of such additional language classes to ensure that the needs of foreign pupils and students are met.

76. For adult migrants, ECRI notes that free Polish language courses are offered within projects carried out by local governments and NGOs. These projects are often supported by EU funds.

Employment

77. Polish anti-discrimination legislation⁸⁷ prohibits any discrimination with respect to employment or occupation, directly or indirect, on any grounds. Particular reference is made to the grounds of colour, religion, national origin and ethnic origin. Employers accused of discrimination must prove that discrimination did not take place. In the case of labour contracts that are protected by law, anti-discrimination measures are considered adequate. Civil contracts are protected under anti-discrimination law, which prohibits unequal treatment in employment on the basis of "race", ethnic origin, citizenship or religion. It appears from ECRI's findings during the visit that it is relatively easy for claimants, including foreign ones, to assert discrimination in the context of court proceedings; however, very few employees come forward with complaints.
78. Independent legal professionals met by ECRI explained that the renewal of residence and/or work permits is cumbersome and takes a minimum of two months, sometimes much longer. The duration varies very significantly between different Voivodships and one difficulty is that the responsible staff in immigration and other relevant offices are often not well trained, which results in incoherent practices between different offices or even individual clerks. In addition, the Border Guard's interpretation of applicable immigration rules appears to change over time, with changes in interpretation only detectable in motivations for negative decisions on applications. On a positive note, in Warsaw, applicants can get a stamp in their passport proving that their applications have been received, and this allows them to keep working until their application for renewal has been decided upon. ECRI encourages the Polish authorities to issue clear and uniform guidance concerning the applicable legislation and rules in the area of residence and work permits and to make it available in writing to potential applicants in an appropriate range of foreign languages, accompanied by training of relevant officials as regards the correct application of relevant legislation in force.

Housing

79. ECRI was informed that there are no governmental housing programmes for migrants and no specific legislation governing their housing in Poland. It emerged from ECRI's findings that due to the lack of social housing, many migrants, refugees and other beneficiaries of international protection have become homeless because they cannot afford free market rent levels. Lack of housing is a major

⁸⁵ Presentation made by the head of the Polish governmental delegation in support of the 22nd, 23rd and 24th periodic report of the Government of the Republic of Poland on the implementation of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, Geneva, 6–7 August 2019 ([Link](#)).

⁸⁶ Based on an August 2017 Ordinance of the Minister of Education and Science on the education of non-Polish and Polish citizens who were previously enrolled in education in other countries.

⁸⁷ Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania, Dz.U. 2010 nr 254 poz. 1700 ([Link](#)).

hindrance to successful integration and ECRI encourages the Polish authorities to look for viable solutions.

B. Roma

80. According to recent but unofficial sources, there are around 25 000 Roma in Poland. However, the estimates vary very significantly. The Roma population is made up of five main groups with different cultural, social and economic traits.
81. Since 2001, the Polish Government implements integration policy programmes for Roma. The third “*Integration Programme of the Roma Community in Poland*” was implemented between 2014-2020. The 2021-2030 “*Programme for Social and Civic Integration of the Roma Community in Poland*”⁸⁸ is thus the fourth strategy for the improvement of the situation of Roma in the country. This strategy adopts a different approach compared to the previous ones. Instead of actions in the form of social assistance, it focuses primarily on strengthening structural mechanisms, identifies particular groups to be supported and aims at improving the level of education, which is key to improving the situation of Roma. This is a positive development. ECRI trusts that the Roma Programme will be supplemented with practical measures aimed at addressing the exclusion of a significant part of the Roma community from social and economic life and at supporting non-Polish Roma, who make up a notable number of the Roma living in Poland.

Education

82. ECRI notes with satisfaction that progress was made in Roma children’s attendance and graduation rates. The proportion of Roma children in so-called special schools for children with learning disabilities has dropped significantly. Nonetheless, this proportion still remains significantly higher than the national average⁸⁹ and school attendance and achievement by Roma children still gives rise to concern, including for reasons of insufficient knowledge of Polish.
83. Roma education assistants have played an essential role over the years in the inclusion of Roma children into the education system, as well as in ensuring attendance and liaising between parents and the schools. ECRI notes with appreciation that the Polish Government provides incentives for local authorities to increase the number of Roma education assistants (school mediators).⁹⁰ The assistant/pupil rate is about 1/23.
84. ECRI recommends that the Polish authorities strengthen their efforts to decrease school dropouts among Roma pupils, including by enhancing Polish language education given prior to primary school and by ensuring sustainable ratios of Roma pupils per Roma education assistant, as well as by preventing any practices of sending Roma pupils to “special schools” for grounds other than children having established learning disabilities.

Employment

85. It emerged from ECRI’s findings during the visit that discrimination against Roma in employment is underreported. According to a survey carried out by the Ombudsman’s Office, most Roma are not aware that discrimination in employment or in access to services is prohibited by law. About 40% do not know any institution they could turn to in case of such discrimination. The main difficulty that is highlighted in the survey is the lack of awareness of existing support services and legislation as well as a widespread lack of trust in public institutions, which results

⁸⁸ Programme for Social and Civic Integration of the Roma Community in Poland of the Roma Community in Poland for 2021—2030: [Poland's national Roma strategy \(2021 - 2030\) | European Commission \(europa.eu\)](#)

⁸⁹ Fourth Opinion on Poland, by the Advisory Committee on the Framework Convention for the Protection of National Minorities, covering 2015-2019: adopted on 6 November 2019, P.6, para. 11

⁹⁰ https://commission.europa.eu/publications/assessment-report-member-states-national-roma-strategic-frameworks-full-package_en

in underreporting.⁹¹ ECRI invites the Polish authorities to take further action to ensure that Roma suffering from discrimination in employment receive appropriate support to assert their rights before appropriate civil or administrative bodies, in the light of paragraph 5.f. of GPR No. 13 on combating antigypsyism and discrimination against Roma.

Health care

86. Polish Roma have access to health care, based on the insurance premium-based health system. Even if they are unemployed, they may be covered by health insurance upon application to the social welfare authorities. Romanian Roma, who constitute the largest group of non-Polish Roma in Poland, can – if their residence is registered – profit from the reciprocal health care services of the EU.⁹² However, awareness of the necessary administrative procedures and documents is low in the Romanian Roma community. The Polish authorities have given ECRI examples of solutions found in individual cases of serious medical needs of Romanian Roma. ECRI was however shown large medical bills by Romanian Roma for medical services obtained in Poland. ECRI invites the Polish authorities to ensure that no financial or administrative hindrance impedes access of Roma, including non-Polish Roma, to health care services, in the light of paragraph 7.c. of GPR No. 13 on combating antigypsyism and discrimination against Roma. Such measures may include the provision of user-friendly information in an appropriate range of languages.

Housing

87. The attention of ECRI was brought to the generally deplorable housing and living conditions for many Roma living in Poland. In the opinion of the Ombudsman institution, it is necessary to create a separate, comprehensive programme for the Roma community to plan and improve Roma settlements in Poland.⁹³ The Ombudsman also reported about “forced” relocation of Roma. For instance, in one case, a municipality in which Roma were residing bought them houses in a nearby municipality, where they were refused practical access to the new housing by the ‘receiving’ municipality, which issued an order prohibiting accommodation in the purchased buildings.⁹⁴ Such changes of permission criteria have been declared null and void by regional courts but still cause delays and severe disincentives for Roma to move.⁹⁵ ECRI deplores such efforts by municipalities to terminate or prevent Roma residence in their territories.
88. Similarly, some local authorities elsewhere have proven reluctant to provide *bona fide* support measures to improve the housing situation of Roma. An example is the Roma settlement in Maszkowice in the Łącko municipality of the Małopolskie voivodship. This settlement, inhabited by around 270 persons, comprises a group of residential and utility buildings, most of which are decades old and of a quality unsuitable for housing people. The Ombudsman has tried to persuade the local authorities of Łącko to act more decisively to solve the housing situation of these Roma. Despite some measures to improve the situation, such as the purchase of some housing containers and some repairs of the infrastructure of the buildings, the living conditions remains deplorable. For some of the Roma inhabitants, the situation got worse when the local building control inspector issued around 40 administrative decisions to demolish unpermitted structures located in the

⁹¹ European network of legal experts in gender equality and non-discrimination (2018), Country report Non-discrimination: Poland, p. 169.

⁹² Which form part of the free movement of persons within the European Union.

⁹³ European network of legal experts in gender equality and non-discrimination (2020), Country report Non-discrimination: Poland, page 51.

⁹⁴ One example concerns the Limanowa (“sending”) and Czchow (“receiving”) municipalities.

⁹⁵ See Commissioner for Human Rights of Poland, (2018), Summary of the Report on the Activity of the Ombudsman in Poland in 2017, p. 18, concerning Limanowa and Czchow municipalities

settlement on the basis of safety concerns. As its residents did not have the means to respect those decisions, enforcement proceedings initiated by the building control inspectorate led to the imposition of fines of up to 40 000 zloty (about 8 500 Euros) on the Roma.⁹⁶

89. At the same time, there are positive examples of municipalities genuinely trying to help their Roma residents, such as the City of Gdansk, which is offering flats to Romanian Roma living in housing of extremely poor quality. The example of the formerly unpermitted settlement in Kamieńskiego Street in Wrocław shows that housing solutions can be found. More specifically, constructive co-operation between NGOs, academics and municipal representatives brought a solution allowing the voluntary resettlement of Roma previously living in Kamieńskiego Street into regulated and better-quality housing.⁹⁷ ECRI considers such co-operation as **good practice**.
90. ECRI recommends that the Polish authorities, as part of the 2022-2030 Programme, take measures to improve the housing and living conditions of Roma in Poland, notably by: (i) supporting local authorities, including financially, in taking suitable action; (ii) putting in place mechanisms for inciting or obliging local authorities to take part in the implementation of housing programmes and/or to co-operate with national authorities and (iii) encouraging or placing an obligation on local authorities, in consultation with the Roma communities concerned, to develop housing solutions that provide a decent alternative to the irregularly erected and substandard settlements.

C. Muslims

91. Overall, the Muslim minority in Poland is not very visible, which is linked to the small size of the community.⁹⁸ The Muslim League and the MZR have organised some awareness-raising activities about Muslim life, in efforts to increase the low knowledge of the Muslim minority among the general public. At local level, the City of Poznan has provided grants to the Muslim League, allowing it to showcase Muslim life and culture. One manifestation of this co-operation is the publishing of a calendar with the main holidays of the Muslim, Jewish and Christian communities. ECRI considers such co-operation a **good practice**. Building on the positive example of Poznan and in line with § 28 of ECRI's General Policy Recommendation No. 5 (revised) on preventing and combating anti-Muslim racism and discrimination, it encourages the Polish authorities to promote learning about the diversity of Muslim life and Muslim history as well as the positive contribution of Muslim persons, communities and culture to European societies.

IV. TOPICS SPECIFIC TO POLAND

Equal treatment of people fleeing war and other emergencies

People fleeing Russia's war of aggression against Ukraine

92. Following the invasion of Ukraine by the Russian Federation on 24 February 2022, the Polish Parliament adopted the Act of 12 March 2022 on the Assistance to Ukrainian Citizens in connection with the Armed Conflict in the Territory of that

⁹⁶ Observations of the Commissioner for Human Rights of Poland concerning measures aimed at the implementation of the provisions of the Convention on the elimination of all forms of racial discrimination in the years 2014-2019, July 2019, p.27.

⁹⁷ In § 78 of its fifth report on Poland published in 2015, ECRI recommended that the authorities assess the idea of setting up a group of experts to study the situation of Roma communities in Wrocław, to identify structural and systemic responses on a national level which could be incorporated into the integration programme for the Roma community 2014-2020. As a result, several expert groups were established and the situation related to the illegal Roma settlement in Wrocław was analysed, and the housing situation was solved to everybody's satisfaction, in part thanks to a local programme funded by the Wrocław Municipality to offer Roma social adaptation, housing, vocational training and language courses.

⁹⁸ There is an estimated 75 000 Muslims in Poland, including Polish Tatars who have resided in Poland for very long, while others who have arrived in the country in recent decades. These communities are organised around two organisations, the Muslim League with some 25000 members, and the Muslim Religious Union (MZR), which has a couple of thousand followers.

State. The Act provides Ukrainians who have fled with 18 months of legal residence in Poland as of 24 February 2022.⁹⁹ It further provides for the possibility of granting such Ukrainian citizens a Polish national identification number (PESEL), which entitles them to certain public services.

93. Other non-EU citizens who have fled the war in Ukraine are entitled to temporary protection for up to one year, with the possibility of two extensions of six months each. The Office for Foreigners grants such persons access to health care and social assistance, as well as Polish language lessons.¹⁰⁰
94. According to the Act of 12 March 2022 and other relevant provisions, Ukrainians having fled their country are entitled to accommodation and full-board collective meals for a period of two months. ECRI commends the Polish authorities at different levels for the generous support that has been provided in this context. Voivodships may provide such assistance beyond the two-month period. This is nevertheless subject to the availability of funds.
95. Alongside civil society organisations, which have generally been praised for their humanitarian work with regard to persons fleeing from Ukraine, Polish ordinary citizens have played a significant share in the provision of support to Ukrainians seeking refuge in Poland, notably by accommodating them in their homes. State support, albeit modest and for a limited period of time,¹⁰¹ were offered for hosting people who fled from Ukraine. ECRI also notes that the private sector, notably hotels, have played a crucial role in offering Ukrainians fleeing the war free accommodation.
96. Citizens of Ukraine residing legally in Poland have also been granted access to the public health care system. At the time of the visit, the ECRI delegation was informed that the Commissioner for Patients' Rights planned to launch a website with information for patients from Ukraine, which is a welcome initiative.
97. Ukrainian children benefiting from temporary protection have been integrated into Polish schools. They are entitled to at least six hours of Polish language classes per week.¹⁰² This has required significant efforts by the school system and especially teachers. A course with intensive Polish language lessons is specifically dedicated to appropriately qualified Ukrainians who wish to become teaching assistants for Ukrainian pupils in Polish schools. These courses are organised by the Centre for Education Development, which is subordinate to the Ministry of Education. There are also a few privately funded schools teaching the Ukrainian curriculum.¹⁰³
98. ECRI notes that the above Act of 12 March 2022 allows its beneficiaries access to the labour market and related services, including job placement, career counselling and training on the same terms as Polish citizens. The same applies to starting a business activity. During the first four months of the war in Ukraine, over 250 000 Ukrainians started regular employment in Poland, corresponding to some 50% of the population that fled to and stayed in Poland. Ukrainians are well placed to fill

⁹⁹ A non-Ukrainian spouse of a Ukrainian citizen is considered as a Ukrainian citizen provided that s/he came to Poland directly from Ukraine in connection with the hostilities. However, if s/he leaves Poland for more than one month, the period of 18 months legal residence no longer applies.

¹⁰⁰ Non-Ukrainian nationals who have arrived in Poland from Ukraine since 24 February 2022 and fall within the scope of the Council Directive 2001/55/EC may benefit from temporary protection. Assistance in accommodation can be provided by the Head of the Office of Foreigners in one of the nine centres for foreigners under the *Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland*.

¹⁰¹ The relevant public authorities offer compensation, set at 40 PLN (about 8,4 Euros) per person per day for up to 120 days, for people providing housing. However, a number of civil society interlocutors highlighted that it often took time for financial support to be provided to private individuals hosting temporary protection beneficiaries.

¹⁰² According to § 11a of the Ordinance of 12 March 2022 issued by the Ministry of Education and Science.

¹⁰³ [Report of the fact-finding mission to Poland by the Council of Europe's Special Representative of the Secretary General on Migration and Refugees](#), 18 August 2022, paragraph 77.

gaps in the labour market thanks to closeness of language and culture. As for tasks requiring formal qualifications, the attention of ECRI was brought to the fact that the lengthy procedures for the recognition of diplomas of third country nationals, including Ukrainians, causes difficulties and is costly for the applicant.

99. ECRI recommends that the Polish authorities take measures to facilitate and accelerate the process of recognising foreign diplomas and other qualifications to improve the employability of Ukrainian nationals, recognised refugees and other third country nationals. Such measures could build on the “European Qualifications Passport for Refugees” project, which has been carried out by the Council of Europe and partners.

100. If the above legal and other measures can be considered as exemplary as regards the level of protection and support offered to the Ukrainians who have fled their country, ECRI also received reports of unjustified preferential treatment of Ukrainian citizens, based on ethnicity, in practice. In particular, civil society estimates put the number of Ukrainian Roma who have fled at about 50 000. The information received from various civil society interlocutors during the ECRI visit suggest that Ukrainian Roma received lower quality support in Poland, including as regards accommodation, or that they were refused accommodation by some local authorities. There are similar reports concerning differential and negative treatment of nationals of Asian and African origin who fled from the war in Ukraine, though these reports have been denied by the Polish authorities.¹⁰⁴ There have also been reports about such refugees being attacked by ultranationalists in Poland.¹⁰⁵ ECRI invites the Polish authorities to carry out effective investigations into any such cases that have come to light and ensure that all people fleeing the war in Ukraine benefit from the same level of protection and support.

People fleeing war and other emergencies coming through Belarus

101. As of late summer 2021, the Polish authorities were confronted with large numbers of migrants and asylum seekers at the border with Belarus. A number of official and other interlocutors underlined that this situation was artificially created by the Belarusian authorities in response to European Union sanctions against Belarus, notably by facilitating the travel to Belarus by vulnerable third country nationals wishing to flee their countries. It was apparently accompanied by false promises of easy access to the European Union by crossing the border into Poland. While these migrants and asylum seekers were, and still are, instrumentalised, they were and remain vulnerable. The Council of Europe’s Commissioner for Human Rights, after a visit to the border area in November 2021, stated that although the situation is the result of the reprehensible actions by Belarus, this did not absolve Poland from its human rights obligations.¹⁰⁶

102. On 14 October 2021, the Polish Parliament passed an amendment to the Law on Foreigners, which became known as the “expulsion law”. Among others, it amended the Law on Granting Protection to Foreigners in the Territory of the Republic of Poland, allowing the authorities to disregard applications for international protection made by foreigners stopped immediately after having crossed the border outside of an official border crossing, unless they have arrived directly from a territory where their lives or freedoms are at risk of persecution or serious harm, and have given credible reasons for crossing the border illegally and have claimed asylum immediately upon crossing the border.¹⁰⁷

¹⁰⁴ [‘Pushed back because we’re Black’: Africans stranded at Ukraine-Poland border \(france24.com\)](https://www.france24.com/en/europe/20210928-pushed-back-because-we-re-black-africans-stranded-at-ukraine-poland-border)

¹⁰⁵ [People of colour fleeing Ukraine attacked by Polish nationalists | Ukraine | The Guardian](https://www.theguardian.com/world/2021/oct/08/people-of-colour-fleeing-ukraine-attacked-by-polish-nationalists)

¹⁰⁶ [Commissioner calls for immediate access of international and national human rights actors and media to Poland’s border with Belarus to end human suffering and violations of human rights - View \(coe.int\)](https://www.coe.int/en/web/com-hr-portal/commissioner-calls-for-immediate-access-of-international-and-national-human-rights-actors-and-media-to-poland-s-border-with-belarus-to-end-human-suffering-and-violations-of-human-rights-view)

¹⁰⁷ Ustawa z dnia 14 października 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw, Dz.U. 2021 poz. 1918 ([Link](#)). According to the Border Guard, “there are no hostilities taking place on the territory of the Republic of Belarus”, which suggests that Poland considered Belarus a safe third country.

103. According to the above law, as amended, an asylum seeker may be removed from Polish territory immediately, without any real opportunity to request international protection. Although such removal orders are in theory liable to appeal,¹⁰⁸ the appeal does not have a suspensive effect. The amendments did not provide for any exceptions for persons seeking international protection. These amendments, criticised by, among others, the OSCE/ODIHR and UNHCR, entered into force on 26 October 2021.¹⁰⁹ The number of people wishing to seek international protection and attempting to cross the Belarussian-Polish border has significantly decreased in the months following the autumn 2021. However, there have been regular reports of so-called pushbacks to Belarus by Polish border guards.¹¹⁰ In the view of ECRI, the measures taken by the Polish authorities in 2021 in respect of people fleeing war and other emergencies coming through Belarus stand in stark contrast with the admirably warm welcome received by Ukrainian citizens fleeing the war in Ukraine and could result in racial profiling and discrimination while impeding persons on the move from submitting protection claims, thereby putting them at risk of “refoulement”.
104. In autumn 2022, there were several consecutive decisions by Polish courts to the effect that immediate returns constitute violations of national, as well as European Union and other international law. The first such court decision was taken on 15 September 2022 by the Voivodship Administrative Court in Białystok.¹¹¹ Similar decisions were subsequently taken by the District Court in Bielsk Podlaski,¹¹² the Voivodship Administrative Court in Warsaw¹¹³ and the Voivodship Administrative Court in Białystok.¹¹⁴
105. It should also be highlighted that Polish NGOs strived to help vulnerable people who sought refuge in Poland, regardless of which border they have crossed. Regrettably, ECRI’s findings during the visit suggest that these organisations were routinely hindered in their provision of support to migrants and people seeking international protection at the border with Belarus.¹¹⁵ ECRI considers that the initiatives taken by civil society organisations at both borders should be continuously supported by the authorities.

¹⁰⁸ In practice, it is very difficult for the persons concerned to appeal. ECRI is nevertheless aware of at least one such appeal, which was supported by the Ombudsman, see <https://bip.brpo.gov.pl/pl/content/rpo-wsa-cudzoziemcy-pushbacki-przepisy-sprzeczne-z-prawem>

¹⁰⁹ See, in this connection, the third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights in the case *R.A. and others v. Poland* (no. 42120/21), Strasbourg, 27 January 2022, CommDH(2022)3; Urgent opinion on draft amendments to the Foreigners’ Act and the Act on Granting Protection to Aliens on the Territory of the Republic of Poland and ministerial regulation on temporary suspension of border traffic at certain border crossings ([Link](#)), OSCE Office for Democratic Institutions and Human Rights (ODIHR), MIG-POL /428/2021, 10 September 2021; UN High Commissioner for Refugees (UNHCR), UNHCR observations on the draft law amending the Act on Foreigners and the Act on Granting Protection to Foreigners in the territory of the Republic of Poland (UD265), 16 September 2021 ([Link](#)).

¹¹⁰ ECRI notes that other Council of Europe institutions and bodies, in particular the European Court of Human Rights, the Commissioner for Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) are better placed, based on their respective mandates, to consider and pronounce themselves on this matter, and they have done so.

¹¹¹ The Court underlined the necessity of conducting a fair investigation in order to exclude that a decision ordering the foreigners, in this case an Iraqi family, to leave the territory of the Republic of Poland and the immediate execution (...) of the decision does not violate the right to life and freedom from torture, other inhuman or degrading treatment of the foreigner (...). Case reference: II SA/Bk 492/22.

¹¹² Case reference: (ref. VII Kp 203/21)

¹¹³ Case references: IV SA/Wa 420/22, IV SA/Wa 471/22, IV SA/Wa 615/22 and IV SA/Wa 772/22.

¹¹⁴ Ref. II SA/Bk 492/22, II SA/Bk 493/22, II SA/Bk 494/22.

¹¹⁵ Baranowska, Grażyna: A Tale of Two Borders: Poland’s continued illegal actions at its border with Belarus, *VerfBlog*, 2022/3/10, <https://verfassungsblog.de/a-tale-of-two-borders/>.

106. In the light of the above, ECRI refers to its 2022 statement on the consequences of the aggression of the Russian Federation against Ukraine,¹¹⁶ in which it called on all Council of Europe member states to ensure that solidarity with people in need remains the norm in the management of humanitarian crises and that all people fleeing war and other emergencies, irrespective of their national or ethnic origin, citizenship, skin colour, religion, language, sexual orientation or gender identity, should be promptly offered adequate protection.
107. ECRI strongly recommends that the authorities fundamentally review the Polish legal and policy framework and law enforcement practices in relation to people fleeing war and other emergencies, including those coming through Belarus, with a view to ensuring equal and effective access to support and protection.

¹¹⁶ Adopted at ECRI's 88th plenary meeting (29 March – 1 April 2022). In June 2022, the Committee of Ministers and the Parliamentary Assembly of the Council of Europe encouraged member states to take any necessary action in the light of ECRI's statement (see decisions taken by the Ministers' Deputies at their 1435th meeting of 1 June 2022 and the Assembly's Resolution 2448 (2022), adopted on 22 June 2022, on the humanitarian consequences and internal and external displacement in connection with the aggression of the Russian Federation against Ukraine.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Poland are the following:

- (§51) ECRI recommends that the Polish authorities initiate legislative amendments to add sexual orientation, gender identity and sex characteristics as explicitly prohibited grounds to the relevant provisions of the Criminal Code.
- (§72) ECRI recommends that the Polish authorities develop and adopt a national migration policy, which will not only be helpful in respect of integrating people who took refuge in Poland as a result of Russia's aggression against Ukraine, but also other migrants with various statuses and purposes of stay in the country. In developing such a national policy, the Polish authorities are invited to seek inspiration from the Council of Europe's Model Framework for an Intercultural Integration Strategy at the National Level. If necessary, Council of Europe support should be sought.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§12) ECRI recommends that the authorities include mandatory training on human rights, equality and inclusion, respect for diversity, prevention of bullying and responses to prejudice and discrimination in the initial and ongoing training of all teachers and other education professionals.
2. (§16) ECRI recommends that the authorities refrain from any attempts to restrict age appropriate education on LGBTI equality and sex education in schools and instead introduce LGBTI awareness-raising measures in the school environment by: i) providing initial and ongoing training for all teachers and school principals in primary and secondary education with suitable training on issues pertaining to sexual orientation, gender identity and sex characteristics and ii) addressing substantial questions on these issues in designated textbooks on sexuality education. Furthermore, a firm message of zero tolerance of LGBTI-phobic attitudes and behaviours should be conveyed to all education professionals interacting with pupils and parents.
3. (§23) ECRI recommends that the authorities ensure access of migrants who are irregularly present in Poland to basic services, in particular education and emergency and other necessary health care, and review the relevant legislation and policies to prohibit, in accordance with the “firewall” principle, public and private bodies from reporting migrants irregularly present in Poland to the immigration authorities, except in exceptional circumstances which are set out in law and subject to judicial review and an effective appeal right.
4. (§26) ECRI recommends that the authorities establish a comprehensive system to collect consistent, reliable and disaggregated LGBTI equality data, according to international data collection standards and while respecting the principles of confidentiality, voluntary self-identification and informed consent.
5. (§31) ECRI recommends that the authorities refrain from any attempts to undermine the effective application of legal provisions against discrimination in employment on the grounds of sexual orientation, gender identity and sex characteristics and instead promote codes of conduct for good practice in employment and equality plans in order to create a diverse working environment that encourages respect for all.
6. (§38) ECRI recommends that the authorities refrain from any action against civil society actors promoting LGBTI equality and make every effort to ensure the safe organisation of LGBTI assemblies, including LGBTI equality marches.
7. (§43) ECRI recommends that the authorities take action to prevent intolerance and discrimination against intersex persons, in particular children. These efforts should entail i) the introduction of specific legislation prohibiting medically unnecessary sex-“normalising” surgery and other non-therapeutic treatments until such time as the intersex child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent, ii) the development of guidelines and training on intersex equality rights for relevant professionals, especially those coming into contact with intersex children, such as teachers and health care professionals, iii) encourage religious leaders at all levels to avoid fuelling interphobia and prevent intolerance and discrimination against intersex children and iv) the dissemination of relevant materials to the people concerned, such as guides for parents of intersex children.
8. (§51) ECRI recommends, as a matter of priority, that the Polish authorities initiate legislative amendments to add sexual orientation, gender identity and sex characteristics as explicitly prohibited grounds to the relevant provisions of the Criminal Code.

9. (§56) ECRI recommends that public figures, such as high-level officials, politicians, and religious, economic and community leaders, be strongly encouraged to take a prompt, firm and public stance against the expression of racist and LGBTI-phobic hate speech and react to any such expression with strong counter-hate speech messages and alternative speech, and promote understanding between communities, including by expressing solidarity with those targeted by hate speech. Elected bodies and political parties should adopt appropriate codes of conduct that prohibit the use of hate speech, call on their members and followers to abstain from engaging in, endorsing or disseminating it, and provide for sanctions. In this respect, ECRI refers to its General Policy Recommendation No. 15 on combating hate speech, Recommendation CM/Rec (2022)16 of the Committee of Ministers of the Council of Europe on combating hate speech and the Charter of European political parties for a non-racist and inclusive society as endorsed by the Parliamentary Assembly of the Council of Europe in its Resolution 2443 (2022).
10. (§67) ECRI recommends that the authorities ensure compulsory training about the effective investigation and prosecution of hate crime for police officers and prosecutors and make courses on the handling of hate crimes available to judges.
11. (§72) ECRI recommends, as a matter of priority, that the Polish authorities develop and adopt a national migration policy, which will not only be helpful in respect of integrating people who took refuge in Poland as a result of Russia's aggression against Ukraine, but also other migrants with various statuses and purposes of stay in the country. In developing such a national policy, the Polish authorities are invited to seek inspiration from the Council of Europe's Model Framework for an Intercultural Integration Strategy at the National Level. If necessary, Council of Europe support should be sought.
12. (§84) ECRI recommends that the Polish authorities strengthen their efforts to decrease school dropouts among Roma pupils, including by enhancing Polish language education given prior to primary school and by ensuring sustainable ratios of Roma pupils per Roma education assistant, as well as by preventing any practices of sending Roma pupils to "special schools" for grounds other than children having established learning disabilities.
13. (§90) ECRI recommends that the Polish authorities, as part of the 2022-2030 Programme, take measures to improve the housing and living conditions of Roma in Poland, notably by: (i) supporting local authorities, including financially, in taking suitable action; (ii) putting in place mechanisms for inciting or obliging local authorities to take part in the implementation of housing programmes and/or to cooperate with national authorities and (iii) encouraging or placing an obligation on local authorities, in consultation with the Roma communities concerned, to develop housing solutions that provide a decent alternative to the irregularly erected and substandard settlements.
14. (§99) ECRI recommends that the Polish authorities take measures to facilitate and accelerate the process of recognising foreign diplomas and other qualifications to improve the employability of Ukrainian nationals, recognised refugees and other third country nationals. Such measures could build on the "European Qualifications Passport for Refugees" project, which has been carried out by the Council of Europe and partners.
15. (§107) ECRI strongly recommends that the authorities fundamentally review the Polish legal and policy framework and law enforcement practices in relation to people fleeing war and other emergencies, including those coming through Belarus, with a view to ensuring equal and effective access to support and protection.

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APPENDIX: GOVERNMENT'S VIEWPOINT

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

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Poland on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice and unless otherwise indicated, could only take into account developments up until 30 March 2023, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

**Viewpoint of the Polish authorities
on the report of the European Commission against Racism and Intolerance on Poland
adopted on 27 June 2023 within the framework of the sixth monitoring cycle**

According to Article 32 of the Constitution of the Republic of Poland, all persons shall be equal before the law and all persons shall have the right to equal treatment by public authorities. No one shall be discriminated against in political, social or economic life for any reason whatsoever. This standard constitutes a fundamental point of reference for Polish law and actions of national authorities. In order to give effect to the constitutional guarantees of equality, a number of specific regulations protecting against discrimination were introduced into Polish legislation, including the Anti-Discrimination Act. Numerous actions, projects and strategies have been developed to ensure equal treatment and protection against discrimination in practice, including the recent adoption of the next National Action Programme for Equal Treatment, which sets out the main directions of equality policy for 2022–2030. A number of initiatives and reforms of Polish law and practice were implemented as a result of dialogue with the European Commission against Racism and Intolerance and other international human rights monitoring bodies.

Re paragraph 9 of the summary and paragraphs 3-5 of the ECRI's report

The allegations of political pressure faced by the previous and the incumbent Ombudsmen are unsubstantiated.

It is incorrect to consider that the civil lawsuit filed by the Polish public television against the former Ombudsman constituted an example of politically motivated interference. Public television is not a public authority. It filed its private-law lawsuit following the comments made by the former Ombudsman linking the public television with the murder of the former Mayor of Gdańsk. The court dismissed the lawsuit and the case is closed. It is inappropriate to compare an isolated civil lawsuit, lodged by public television in a specific case and dismissed by courts, to a political interference.

According to Article 139(2) of the Act of 27 August 2009 on Public Finance, the Ombudsman has budgetary autonomy. That means that the budget proposed by the Ombudsman must be included by the Minister of Finance in the draft State budget and only the Parliament, but not the Government, has the right to increase or reduce it. The first reduction of the Ombudsman's budget took place already in the budgetary year 2015, *i.e.* under the previous ruling coalition. Since 2017 the Ombudsman's budget has been increased every year by the current ruling coalition.

It is furthermore generally assessed in Poland that the current Ombudsman is able to act independently and acts independently.

Re paragraph 10 of the summary and paragraph 6 of the ECRI's report

The Polish authorities confirm the finding in paragraph 6 of the ECRI's report that the national core curriculum for schools does contain elements of equality values. Indeed, general education includes compulsory content on equality values. In kindergartens and in primary and secondary schools, emphasis is placed on the development of social and civic competences, an introduction into the world of values, including of dedication, cooperation, solidarity and altruism, and on the need to strengthen in students the sense of individual identity and dignity, as well as respect for the dignity of others (Ordinance of the Minister of National Education of 14 February 2017 on the core curriculum of preschool education and the core curriculum of general education for primary schools, including for students with moderate or severe intellectual disabilities, general education for the first-level industrial school, general education for a special school adapting to work and general education for post-secondary school). Therefore, the Polish authorities do not share the opinion expressed in paragraph 10 of the summary and paragraph 6 of the report alleging the lack of appropriate emphasis on equality values.

These actions are supported by other initiatives; for instance, in order to increase young people's legal awareness and equip them with tools necessary to defend their rights in conflict situations, the Ministry of Justice continues a series of youth-oriented educational programmes in the field of mediation (Lessons on Mediation). As part of the project, secondary-school students learn, among others, about what a conflict and its sources are, how to deal with conflict situations, the role of mediation and mediators, whether and in what cases they or their relatives can resort to mediation.

The opinion (of ZNP – Polish Teacher’s Union, *Związek Nauczycielstwa Polskiego*) alleging the lack of training for teachers about intercultural education is unfounded. Intercultural education is included in the programmes of vocational training for teachers and there have also been many projects related to intercultural education for teachers run by the Ministry of Education and Science and the Education Development Centre (*Ośrodek Rozwoju Edukacji*). The offer of training courses organised by the Education Development Centre and in-service training centres is diverse and tailored to the needs of teachers. In addition, training activities are also carried out within the framework of the programmes on mental health, positive (non-violent) communication and peer mediation, introduced to schools by the Ministry of Education and Science.

Conducted by units of the education system, the trainings for teachers aimed at their in-service development are oriented at the needs reported by the teachers themselves. In the opinion of the Polish authorities, training should result directly from the diagnosed needs and one should always prioritise the training genuinely serving the best interest and mental health of pupils, regardless of the cause of the adverse phenomena. Such an approach ensures impact and guarantees that end-users are not discriminated against. The Polish State secures equal rights to all citizens, which is reflected in the functioning of units of the education system, including those providing in-service training and education for teachers. Such approach fulfils the norm contained in Article 32 of the Polish Constitution, which obliges public authorities to treat everyone equally and prohibits any discrimination. For this reason, education emphasises the equal rights of all persons, without favouring specific groups.

Re paragraph 8 of the ECRI’s report

Paragraph 8 of the ECRI’s report mentions, in the context of allegations about hate speech against migrant pupils in Polish schools, the audit report of the Polish Supreme Audit Office entitled: “Education of children of returning parents and of children of foreigners”. However, the positive information and general trend stemming from the findings of the Supreme Audit Office in the very same audit report have been omitted. Yet, on pages 57-58 of its audit report, the following findings of the Supreme Audit Office were also included:

“The process of adapting and integrating a child into the school environment was rated ‘good’ and ‘very good’ respectively by 83% and 91% of parents of children of Polish citizens returning to Poland and parents of foreign pupils, while ‘negative’ and ‘very negative’ respectively by 2% and 3% of parents surveyed (15% and 6% of parents respectively did not express their opinion). In reply to the question about the noticed intolerant behaviour towards another child coming from abroad, 46% of parents of Polish citizens indicated that such situations had ‘never’ occurred and 6%, that it had occurred ‘very sporadically – once/twice a year’ (in one questionnaire it was noted that such cases were ‘frequent – once/twice a quarter/semi-annually’); 69% of parents of foreign students stated that such behaviours had ‘never’ occurred, and 13%, that they had occurred ‘very sporadically – once/twice a year’; the answer in three questionnaires was ‘very often – once/twice a week/month’ (2%) and in two, it was ‘often’ (1%). On the other hand, 47% of parents of Polish citizens and 15% of parents of foreigners did not express an opinion on the subject”.

Moreover, in the case of the four schools described by the Supreme Audit Office, remedial measures were taken by the school staff. In sum, the report by the Supreme Audit Office itself confirms, firstly, that according to the views of the majority of parents of foreign students there is no problem of hate speech against migrant pupils in Polish schools, while the process of adapting and integrating them in the school environment is good or very good, and secondly, that the situation of migrant children in schools is monitored by the Polish authorities, including the Supreme Audit Office.

The figure of 70% of young LGBTI people in Poland allegedly experiencing violence in schools, referred to in paragraph 8 of the ECRI’s report, should be treated as a non-verifiable opinion of an NGO, which has no means to make an appropriate and comprehensive research on this problem.

It is also inappropriate to suggest that no systematic actions are taken by the authorities to address the problem of bullying and violence in schools. In fact, the Act of 12 May 2022 amending the Act on the Education System and certain other acts introduced a mandatory minimum number of posts of specialist teachers (pedagogues, psychologists, special pedagogues, speech therapists,

pedagogical therapists) for all kindergartens and generally accessible schools (including non-public schools). As a result, there was an increase in the employment of specialist teachers in the years 2022-2023 by almost 100% (from approx. 22 thousand to more than 41 thousand posts). This means greater availability of the specialised support in kindergartens and schools for pupils, teachers and parents. It is assumed that the greater availability of specialised support will translate into fewer psychological and pedagogical difficulties in kindergartens/schools, including peer violence.

Every school is also obliged by law to adopt educational and preventive programmes (*programy wychowawczo-profilaktyczne*). Such programmes are prepared based on the results of the annual diagnosis of students' developmental needs in a given school environment and of both protective and risk factors. This means that the upbringing activities to be implemented in a particular school are determined at the level of the school itself, taking into account the tasks assigned to schools in the core curriculum of general education. The educational and preventive programme implemented in each school should include activities addressed to students which are intended to shape the principles of social coexistence, in particular: respect for the dignity of others, responsibility for one's own decisions and choices, trust and respect for students' rights. Above all, an important issue is to ensure a friendly atmosphere at school. If any form of inappropriate, aggressive or discriminatory behaviour occurs among pupils, the school should immediately launch adequate intervention and prevention measures.

Also, the following programmes and projects could be mentioned:

- the government programme for the years 2014-2016 "Safe and friendly school",
- the government programme for the years 2015-2018 to support schools' governing authorities in ensuring safe conditions for learning, education and care in schools "Safe+",
- projects "Positive School Atmosphere" and "Positive School" under the National Health Programme for 2021-2025.

In 2017 the Ministry of Education and Science also prepared a guide entitled "Safe School. Risks and recommended preventive actions to ensure students' physical and digital safety" and made it available on a dedicated website for a free download.

Moreover, it should be noted that the National Action Programme for Equal Treatment for 2022-2030, in Priority III – Education, envisages Action B: "Developing positive relations in the school environment, shaping pro-social, altruistic attitudes, respect for the dignity of all persons and their diversity". Under this Action, Task 3 is implemented which deals with "Dissemination of content concerning shaping pro-social, altruistic attitudes, respect for the dignity of all persons, diversity and the development of positive relationships in peer and school environments".

In sum, the argument that there are no systemic anti-bullying strategies or measures designed to address the problem of bullying and violence in schools is not based on facts.

Re paragraph 10 of the ECRI's report

The Polish authorities confirm the ECRI's findings in paragraph 10 of the ECRI's report regarding the inclusion of education about the Holocaust in the school curriculum and textbooks.

The Holocaust is also one of the most important topics in the research and educational activities carried out by the Institute of National Remembrance (*Instytut Pamięci Narodowej*), which also supports schools and teachers. In the context of presenting the threats stemming from anti-Semitism and totalitarianisms, the Institute has prepared a significant number of publications, exhibitions, conferences, educational materials, audiovisual productions using new technologies, as well as cultural events devoted to Nazi German and Communist crimes, including crimes committed against persons of Polish nationality or Polish citizens of other nationalities, as well as to Polish-Jewish relations¹.

Important part of these activities of the Institute is addressed to teachers. For instance, educational materials, exhibitions and educational materials accompanying exhibitions, which teachers may print themselves, have been elaborated. Materials have been prepared in such a manner so as to facilitate the conduct of lessons by teachers. They concern the Holocaust and the

¹ A catalogue of publications on Polish-Jewish relations may be consulted at <https://ipn.gov.pl/en/digital-resources/publications/9223,Terror-Holocaust-Persecution-A-new-publications-catalogue-available-for-download.html>

Porajmos but also present the example of those who rescued the victims. The materials are also available online so that they could be printed individually. Moreover, online lessons and workshops are conducted by the National Education Office of the Institute of National Remembrance (it is possible to enrol by email). They are addressed to the eighth grade (final year) of primary schools and to secondary schools.

Innovative approaches to education about the Holocaust are also used by the Institute, such as, most recently, an educational project based on an exhibition of Samuel Willenberg's sculptures, depicting people and situations during his stay in the Nazi German extermination camp in Treblinka. These unique sculptures, constituting the world heritage of the Holocaust, were brought from Israel for the purposes of the above project in order to educate about the tragedy of the Holocaust, but also to introduce the young generation to the sculptor – a Jew from Częstochowa, a soldier of the September 1939 Campaign, a prisoner of Treblinka, a participant in the extermination camp revolt, a Warsaw insurgent and an advocate of Polish-Jewish reconciliation. Educational workshops for young people accompanied the exhibition. Another example is the film made by the Institute and dedicated to Mother Matylda Getter who was saving Jewish children during the occupation.

Re paragraph 10 of the summary and paragraph 11 of the ECRI's report

The claim included in paragraph 11 of the ECRI's report that "equality and inclusion issues are decreasingly discussed and promoted in public schools" is not based on any verifiable data and no source has been indicated showing how the conclusion was reached. It is unclear how the alleged decrease has been measured. As already indicated above, the core curriculum of general education includes compulsory content on equality values. In kindergartens and in primary and secondary schools, emphasis is placed on the development of social and civic competences, the introduction into the world of values, including of dedication, cooperation, solidarity and altruism, and on the need to strengthen students' sense of individual identity and dignity, as well as respect for the dignity of others.

In paragraph 11 of the ECRI's report a reference is also made to some non-profitable organisations and think tanks that "purportedly" defend "traditional values". Indeed, the opinions of the civil society organisations in Poland are not uniform and reflect diverse worldviews present in the Polish society. Some of them defend traditional values. Some issues are debated in Poland and significant parts of the Polish society consider that the right of parents to ensure their children education in conformity with their own religious convictions, should also be guaranteed. Poland should not be criticised for the pluralism existing among the civil society and for actions of NGOs using their freedom of speech in the way they find it most suitable, also to advocate for the rights envisaged by the second sentence of Article 2 of the European Convention on Human Rights. The fact that NGOs act and freely express their opinions is a sign of a healthy democracy and not a cause for concern.

Therefore, the report of ECRI should be formulated in a neutral way and should not reflect a bias against some voices present in the public debate in Poland only because they defend traditional values. In the report, the focus should be on the actions of the authorities rather than NGOs. In any event, and notwithstanding the diverse opinions of the Polish society, human rights and equality education is appropriately provided in schools.

Re paragraph 12 of the ECRI's report

With reference to recommendation in paragraph 12 of the ECRI's report it should be noted that mandatory trainings in human rights, equality and inclusion, respect for diversity, prevention of bullying and responses to prejudice and discrimination are already included in the initial and ongoing training of all teachers and other education professionals.

Re paragraph 10 of the summary and paragraph 13 of the ECRI's report

In the opinion of the Polish authorities, promoting education regarding the phenomenon of only one group of citizens would discriminate against other groups of citizens. The Polish State ensures equal rights to all citizens, which is reflected in the functioning of units of the education system, including those providing in-service training and education for teachers. Such an approach fulfils the norm contained in Article 32 of the Polish Constitution, which obliges public authorities to treat everyone equally and prohibits any discrimination. For this reason, education emphasises the equal rights of all persons, without favouring specific groups of citizens. The Polish authorities

encourage ECRI to apply an all-encompassing approach stressing the need to promote equality of all persons rather than one group only.

As regards the document called “Family Charter”, signed by President of Poland Andrzej Duda, it should be recalled that it constituted a political declaration aimed at expressing the importance of the family values as reflected in the Polish Constitution. It is not appropriate to qualify the support for the family as an act of discrimination against anybody. In this context it should also be recalled that it was President Andrzej Duda who vetoed two bills that were criticised by inter alia the supporters of education on LGBTI equality (as noted in paragraph 14 of the ECRI’s report) and on plenty occasions spoke in favour of respect for every person. Against this background, it is very imprecise to summarise the President’s nuanced attitude in the way as it is done in paragraph 13 of the ECRI’s report.

Re paragraphs 14 and 15 of the ECRI’s report

The bills adopted on 13 January and 4 November 2022 amending the Education Law, to which paragraph 14 of the ECRI’s report refers, were vetoed by the President of Poland and did not enter into force. The Polish authorities consider that official documents such as the report by ECRI should not rely on the parliamentary works and on provisions that are not the law in force in Poland. Acts adopted by the Parliament must be signed by the President and published in the Official Journal of Laws. Without fulfilling any of the above conditions, the provisions do not constitute applicable law in Poland and therefore cannot serve as a basis for any analysis of the legal situation in Poland.

In any event, the contents of the bills is not presented precisely in paragraph 14 of the ECRI’s report. Contrary to what is alleged, the bills in question did not contain prohibition for schools to use materials seen as promoting homosexuality. The drafts aimed at increasing the role of parents and school curators in deciding on the school’s cooperation with external partners in conducting lessons.

In this context, it should be recalled that the Polish State protects the right of every parent to educate (bring up) his or her child in accordance with his or her convictions. This inalienable right is confirmed by Article 53(3) of the Polish Constitution and Article 2 of Protocol no. 1 to the European Convention on Human Rights. Parental rights, and thus the right to educate one’s child, may be restricted only in cases provided for by law and only on the basis of a final court decision. Schools and other units of the education system are primarily obliged to respect the decision of the constitutional lawmaker (the Polish Constitution was adopted by referendum). Article 1(2) of the Act of 14 December 2016 – Education Law provides, in line with Article 53 of the Polish Constitution, that the education system, and therefore the schools that are its part, support the educational role of the family. Consequently, the school does not, and cannot, have the right to bring up children, and therefore one cannot speak of its full autonomy in this regard. The task of the school is merely to support the educational role of the family, which means undertaking educational work with students and conducting educational activities and initiatives at school that will ensure the preservation of the constitutional right of every parent to educate children in accordance with their own convictions. In order to improve the organisation of the school’s work, the Education Law obliges schools to establish parents’ councils, which represent all parents and can address the principal with all school matters, including those related to upbringing.

With reference to the allegations made in paragraph 15 of the ECRI’s report and regarding the attempts of the Government to control “how schools are run and what is taught in them, thereby reducing the autonomy of individual schools to invite guest lecturers or choose their own school materials”, it should be stressed that the rules of cooperation between schools and non-governmental organisations have not changed since at least 1991 and have always allowed non-governmental organisations with educational statutory aim (with the exception of political parties and organisations) to expand and enrich the teaching, education and care activities of the school or other educational units. An important element of the decision to use the NGO offer has been the approval by the collegial body of the school – the school board. At present (since 2007) the parents’ council also has a say in this regard. The Government, including the Ministry of Education and Science, does not impose any additional restrictions in this area. Parents have the right to express an opinion and co-decide on the content introduced in the school that goes beyond the core curriculum. This justifies the role of parents’ council in the governing of schools and is in line with the above-mentioned right of every parent to educate his or her child in accordance with his or her convictions.

Education about human sexuality is provided in schools in a sufficient as well as age- and maturity-adjusted way. One cannot speak of any gap in teaching. Poland has developed its own acquis in this domain, which corresponds to the wishes of the majority of parents.

Teachers decide autonomously on the choice of teaching materials and textbooks. Textbooks are developed autonomously by educational publishers, according to the requirements of the Act of 7 September 1991 on the Education System and the Ordinance of the Minister of National Education on the acceptance of textbooks for school use. The Minister responsible for education authorises textbooks for school use on the basis of the positive opinions of textbook experts. One of the conditions for allowing the textbook to be used in schools is its compliance with the applicable core curriculum.

It is up to the teacher or the team of teachers of the relevant educational classes to decide which didactic means are to be used to implement the curriculum approved in the school by the school principal. The teacher may decide to implement the curriculum using a textbook selected from the list of textbooks approved for the school use, or may decide not to use them. The school principal, on the basis of the proposals of the teams of teachers of the respective educational classes and after having consulted the pedagogical council and the parents' councils, determines a set of textbooks or teaching materials valid for at least three school years in all sections of the class concerned.

Re paragraphs 10 and 17 of the summary and paragraph 16 of the ECRI's report

With reference to paragraphs 10 and 17 of the summary and the recommendation in paragraph 16 of the ECRI's report, it has not been proven that education on LGBTI equality has been restricted, and neither has it been shown how the alleged restriction was measured by those who allege this.

The Polish State ensures equal rights to all citizens, which is reflected in the functioning of schools and other units of the education system, including those providing in-service training and education for teachers. Such an approach fulfils the norm contained in Article 32 of the Polish Constitution, which prohibits any discrimination and obliges public authorities to treat everyone equally. For this reason, education emphasises the equal rights of all persons, without privileging specific groups of citizens. It would be more appropriate for the ECRI's recommendation to speak of zero tolerance policy to any discriminatory attitudes. Likewise, the focus solely on textbooks on sexuality education unnecessarily narrows down the scope of the ECRI's recommendation. Discrimination can take various forms – the Polish State is opposed to all forms of discrimination, regardless of its sources.

The Polish authorities will interpret ECRI's recommendation in line with Poland's international obligations stemming from Article 2 of Protocol no. 1 to the European Convention on Human Rights. According to this provision, in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. In compliance with the commitments undertaken on the basis of Protocol no. 1, Poland has created its own legal regulations that provide all pupils with the possibility to take part in classes covering sexual education, while envisaging the right of parents of pupils who are not yet of age, and those pupils who are of age, to resign from participating in such classes. In light of the above, Poland cannot commit itself to implementing the above recommendation of ECRI in a manner contrary to the above-mentioned rights of parents and imposing it with respect to all pupils.

In any case, there is no need to organise specific training in this area, as teachers at the vocational training stage are equipped with the necessary knowledge in the field of psychology and pedagogy and then participate in in-service teacher training, including at teacher training centres.

Re paragraph 17 of the ECRI's report

In addition to the statistics related to the number of foreigners obliged to return following administrative proceedings instituted by the Border Guard, as mentioned in footnote 22, it could be noted that the State Labour Inspection identified 4,958 cases of the illegal entrusting of work to foreigners in 2021, 2,817 in 2020 and 5,947 in 2019.

Re paragraph 18 of the ECRI's report

Criminal sanction for the provision of services to irregular immigrants amounting to the facilitation of irregular entry is legally possible only if the perpetrator's aim is a financial or personal gain. Moreover, in exceptional cases, even if the aim of the perpetrator was such but no financial gain was actually achieved, the court may apply an extraordinary mitigation of penalty or even refrain from imposing it (Article 264a(2) of the Criminal Code).

Re paragraph 19 of the ECRI's report

The statement in paragraph 19 of the ECRI's report, according to which "migrants who are irregularly present in Poland do not benefit from the Polish public health insurance and thus cannot access any type of healthcare free of charge, except for emergency care" is not correct. Migrants staying in Poland, regardless of their entitlement to health insurance, have the right to free-of-charge health care services related to the treatment of mental illnesses, the fight against infections and infectious diseases and the treatment of alcohol, drug and intoxicant addictions – if the provision of such services results from medical indications. They also have a right to free-of-charge medical care provided by emergency medical teams in the event of a threat to health or life. Moreover, migrants identified as staying irregularly and placed in detention centres, including migrants staying illegally who are then applying for international protection, have access to medical care on the same terms as Polish citizens.

Re paragraph 20 of the ECRI's report

The Polish authorities reject the allegation in paragraph 20 of the ECRI's report and footnote 28 that there is an obligation on the part of public health institutions to systematically report the presence of migrants to the Border Guard. Nor can this result from the alleged obligation of the medical facilities to cooperate with the Border Guard in the provision of information, as there is no such obligation of cooperation in a systematic manner.

Re paragraph 22 of the ECRI's report

With reference to paragraph 22 of the ECRI's report and footnote 31, it should be clarified that the position of irregularly present and working migrants is, in legal terms, similar to that of all other workers submitting complaints. Similarly as all other workers submitting complaints to the Labour Inspection, they are not a party to the inspection proceedings and may not appeal against the labour inspector's decisions issued towards the employer, but they may further pursue their claim before a court. The model adopted in Poland safeguards the promptness of inspection proceedings on the one hand, and on the other hand, procedural guarantees and thorough examination of claims before the courts.

For the record, it should be noted that in recent years, cooperation between the State Labour Inspection and the Border Guard in the form of joint inspections has become rare. Currently, both institutions carry out most of their inspections independently. In principle, joint inspections are carried out only in the case of interventions related to the performance of work in controlled entities by a larger number of foreigners. Therefore, it is not appropriate to state that such joint inspections are frequent.

Re paragraph 16 of the summary and paragraph 23 of the ECRI's report

With reference to the recommendation included in paragraph 16 of the summary and paragraph 23 of the ECRI's report the Polish authorities wish to reassure that children of migrants staying illegally in Poland have full access to education – on equal footing with Polish children. All children in Poland, regardless of their status, are subject to compulsory education.

Polish authorities also reassure that migrants staying illegally in Poland have access to healthcare in life-threatening situations and obviously can have full access upon payment. The recommendation by ECRI does not take this fact into account. Moreover, migrants identified as staying irregularly and placed in detention centres, including those who subsequently apply for international protection, have access to medical care on the same terms as Polish citizens. Migrants staying in Poland, regardless of their entitlement to health insurance, also have the right to free-of-charge healthcare services related to the treatment of mental illnesses, the fight against infections and infectious diseases and the treatment of alcohol, drug and intoxicant addictions – if the provision of such services results from medical indications. They also have a right to free-of-

charge medical care provided by emergency medical teams in the event of a threat to health or life.

In this context, one should bear in mind that Polish citizens have access to other medical care than life-saving treatment (or treatment of mental illnesses, the fight against infections and infectious diseases and the treatment of alcohol, drug and intoxicant addictions) if they have health insurance, meaning, in principle, if they are employed and their employer pays this insurance or if they pay such insurance on their own or are covered by old-age or invalidity pensions. Otherwise they have access to medical care but have to pay for it. Thus, there is no difference in treatment between citizens and irregular migrants.

Moreover, the Polish authorities should like to emphasize that no provision in Polish law obliges either a public authority or a private person to report the illegal stay of a migrant to other authorities. Illegal stay is not a criminal offence in itself (but merely a misdemeanour), while the obligation to notify the authorities applies to criminal offences only.

Re paragraph 24 of the ECRI's report

Contrary to what is suggested in paragraph 24 of the ECRI's report, there has been no decrease in the level of protection of human rights of LGBTI people in Poland. Their human rights are not questioned. In the legal sphere, LGBTI people have not been deprived of any of their existing rights. The imperative standard of equality of all persons and the prohibition of discrimination on any ground are still fully in force. Therefore, it cannot be considered that Poland denies any rights to LGBTI persons in breach of its international or constitutional obligations.

Re paragraphs 26 and 51 of the ECRI's report

With reference to the recommendation in paragraph 26 of the ECRI's report, it should be borne in mind that the collection of data covered by this paragraph is subject to special limitations provided for by Articles 9 and 10 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ... (General Data Protection Regulation, GDPR).

The collection of personal data of LGBTI persons may potentially be linked with the processing of not only the ordinary personal data, but also special category of data (Article 9 of the GDPR – personal data concerning *inter alia* health, philosophical beliefs, sex life, sexual orientation, and Article 10 – personal data on criminal convictions and offences or related security measures). Such data may be processed only if the conditions set out in Article 9(2) of the GDPR are met. These special categories of data are also subject to a special processing regime, which means that they should be protected in a special way, unlike other categories of data classified as ordinary data. Similarly, special protection is enforced by Article 10 of the GDPR regarding the processing of personal data relating to convictions and prohibited acts or related security measures (this provision should be borne in mind in the context of ECRI's recommendations included in paragraph 51).

The increased standard of protection of these categories of data was introduced by the EU legislator given that their processing significantly and deeply interferes with privacy and is associated with an increased risk of breaching the rights and freedoms of data subjects. It is also worth emphasizing that the processing of personal data should take into account the rules of protection of personal data as defined in Article 5 of the GDPR, including the principle of data minimisation, according to which personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed.

The National Action Programme for Equal Treatment for 2022-2030 contains a comprehensive priority (no. VII) related to data collection and research. Nevertheless, the Polish authorities cannot commit themselves to the introduction of any system of data collection and research that would not be compatible with their obligations under the EU General Data Protection Regulation.

Re paragraph 29 of the ECRI's report

In the framework of the labour inspection, only objective circumstances, directly related to the breach of the labour-law provisions and verifiable by means of the evidence readily available to the inspector, remain the object of interest of the labour inspectors. Therefore, in many cases it is not possible for the labour inspectors to determine whether or not there has been a breach of the

equal treatment and anti-discrimination provisions. Moreover, in respect of the proceedings completed by the labour inspectors, commented by ECRI in paragraph 29, it would be more correct to state that it was not possible for labour inspectors to establish grounds for considering complaints well-founded rather than that no violations were found. Employees are entitled to pursue their claims against their employers by means of appropriate proceedings before the competent courts. Nevertheless, such cases lodged with courts are very rare.

The fact that there are only few complaints to labour inspectors or courts alleging discrimination of LGBTI persons in employment may well prove the overall “diverse working environment that encourages respect for all” and therefore should not be presented as something negative. As paragraph 29 of the ECRI’s report has in fact not identified any dysfunctions in the labour protection system, but on the contrary, it has confirmed effective protection of LGBTI persons by the jurisprudence of Polish courts, the limited number of complaints may well testify to the limited occurrence of problems in this area.

As far as the case against the Polish Television (*Telewizja Polska*) is concerned, mentioned in the last sentence of paragraph 29 and in footnote 43 of the ECRI’s report, the Polish authorities consider that the Court of Justice of the European Union did not prejudge that discrimination actually had occurred in case no. 356/21 but provided a legal interpretation upon the request of the referring judge.

Re paragraph 30 of the ECRI’s report

Paragraph 30 of the ECRI’s report does not present a true picture of the factual and legal situation in Poland regarding access to goods and services for LGBTI persons. It is an unjustified generalization to speak, based on one case only, of denial of access to goods and services “on grounds of sexual orientation, gender identity or sex characteristics”.

Moreover, the ruling of the Constitutional Tribunal was questioned by ECRI based on an *ad personam* argument only rather than an analysis of its merits. It would however be useful to mention what the Constitutional Tribunal actually said and what the legal consequences of its judgment actually are. In fact, the Constitutional Tribunal only ruled that penalising a refusal to provide services is not necessary for the protection of consumers’ interests or for the protection against acts of discrimination. It recalled that legal solutions envisaging criminal sanctions as a means of protecting the economic interests of consumers should be used by the lawmaker only exceptionally and to a limited extent. The protection of the consumers’ interests can be achieved in ways that are less intrusive to the constitutional freedoms and rights of persons providing services. Civil-law regulations, anti-discrimination law, regulations related to public economic law and provisions on the protection of consumers play a special role here.

The only consequence of the Constitutional Tribunal’s judgment was the removal of criminal sanctions but not the removal of protection of equal access to services, which is still secured by Polish law. The equal access to services is continuously secured by many other legal acts and victims of discrimination may seek compensation based notably on the provisions of the Civil Code. It is highly imprecise to state based on this judgment that access to goods or services is denied in Poland on grounds of “sexual orientation, gender identity or sex characteristics”. The Polish authorities also submit that they are not obliged by international law to secure criminal-law sanctions in cases of denial of services. On many other occasions the Council of Europe bodies and human rights defenders opted for Poland’s departure from criminal-law sanctions for the conduct closely linked to freedom of expression.

Moreover, it does not seem to be the competence of ECRI to assess the independence of the courts in Poland.

Re paragraph 31 of the ECRI’s report

The use of procedural rights by the Prosecutor General should not be treated as attempts of the Polish authorities “to undermine effective application of legal provisions against discrimination in employment on the grounds of sexual orientation, gender identity and sex characteristics”. Moreover, paragraphs 29 and 35 of the ECRI’s report in fact confirm that Polish courts ensure effective protection, bearing in mind that the cases referred to by ECRI were examined in full compatibility with the principle of equality of arms.

Re paragraph 32 of the ECRI's report

With reference to paragraph 32 of the ECRI's report, the Polish authorities stress that Article 18 of the Constitution of the Republic of Poland expressly states that marriage is a union between a woman and a man, while Article 12 of the European Convention on Human Rights and Article 9 of the Charter of Fundamental Rights of the European Union expressly state that the question of marriage is a matter regulated by the national law of the Member States.

The internationally legally binding standards do not impose on Poland any obligation to provide for same-sex marriages or civil partnerships. The case-law of the European Court of Human Rights consistently rules out the existence of a right to have a same-sex marriage recognized by the State (see e.g. the case of *Hämäläinen v. Finland* [GC], no. 37359/09, 16 July 2014). Paragraph 25 of the Appendix to the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity explicitly admits a situation where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples.

The principle of equal treatment, including non-discrimination, applies only to situations involving two or more persons who, by reason of the same or relevantly similar circumstances, should be guaranteed equal treatment by the law and the authorities of the State. Marriage, by its very nature, is addressed to and reserved for persons of the opposite sex, not least because it is naturally open to the possibility of procreation. The mere premise of this possibility is sufficient for the institution of marriage to be recognized as autonomous. The whole process of procreation by natural means, upbringing and education of the offspring should be regarded by the State as a contribution to the formation of future citizens, and the special guarantees accorded to marriage, understood as a union of a man and a woman, are therefore fully justified.

Re paragraph 34 of the ECRI's report

The Polish authorities reiterate that the resolutions mentioned in paragraph 34 of the ECRI's report, related to the so-called LGBT ideology or Family Charters, were adopted by bodies of local self-government units that are independent of the Government. As far as the legal status of these resolutions is concerned, it should be clarified that they:

- do not constitute acts of local law that would establish rights and obligations of a general nature, universally applicable and addressed to an indeterminate number of addressees,
- do not constitute acts of public administration that would constitute an exercise of authority governed by public law,
- are merely declarations representing the views of council members on philosophical and moral issues.

As such, these resolutions could not form a basis for any rights or obligations of citizens.

In January 2023, after having obtained the explanations of the Polish authorities, the European Commission decided to close the procedure conducted on the basis of Article 258 of the Treaty on the Functioning of the European Union concerning these resolutions. It means that after having analysed the explanations of the Polish side the European Commission did not find any infringement by Poland of its EU membership obligations as a result of the adoption of the aforementioned resolutions. This decision is final.

Re paragraph 35 of the ECRI's report

According to the data published on the website of the Polish Ombudsman, by 16 August 2023, 29 local self-governments out of the 36 ones officially requested by the Ombudsman to do so had repealed their resolutions related to the so-called LGBTI ideology or modified them accordingly. In some cases they had replaced their previous resolutions by Local Self-Government Charters of Family Rights.

Re paragraph 36 of the ECRI's report

The information in paragraph 36 of the ECRI's report is presented in a one-sided way and selectively, losing sight of the overall picture of the situation. The rights of LGBTI persons, including the right to freedom of peaceful assembly, are not restricted and everyone is free to express their views. The number of equality marches has increased significantly over the last years with new cities having become venues of such parades and the vast majority of these events being

conducted smoothly. According to the data of the organisers², in 2022, equality parades were organised in 29 cities throughout Poland compared to merely 7 cities where such events had been organised in the period of 2006-2016 (compare also the first sentence in paragraph 58 of the [Memorandum](#) of 3 December 2020 by the Council of Europe's Commissioner for Human Rights). This clearly proves that LGBTI persons do effectively enjoy freedom of assembly in Poland.

As of 2015, the regulations governing the time-limits for examining appeals against preventive bans on public assembly are strict and in principle should ensure the adoption of a judicial decision before the date on which the assembly is planned. It is not clear on what basis the statement of "much delay" is made in paragraph 36 of the ECRI's report. It would be useful to verify it in the respective cases.

Re paragraph 37 of the ECRI's report

Neither the legal regulations in force related to civil society organisations nor the practice of their application limit the possibility to act for organisations promoting LGBTI issues. LGBTI persons are subject to the same police procedures as all victims of crime or offenders.

The vague information provided in paragraph 37 of the ECRI's report makes it impossible to verify and comment on the allegation that persons opposing, inter alia, homophobia are exposed to retaliatory measures by public authorities, including in the form of criminal charges.

Re paragraph 40 of the ECRI's report

The remark in paragraph 40 of the ECRI's report, suggesting that "a transgender person's parents must be sued by the applicant according to the logic that they are responsible for having registered the erroneous sex of the applicant at birth" does not reflect the legal situation in Poland. The fact that parents act as defendants in such cases is linked with the general model of the Polish civil procedure, applied also in other types of cases related to the family relations, and has nothing to do with attribution of any fault to them. This is a purely procedural construction aimed at complying with the rule of two-party proceedings – as was clearly explained in the judgment of the Supreme Court of 10 January 2019 (case ref. no. II CSK 371/18).

The statement in paragraph 40 that the procedure for legal sex reassignment is costly or may be traumatising is subjective and not based on objective data. The need to guarantee legal certainty and security of legal relations, including of data in civil-status records, fully justifies the reliance by courts on credible documentation. In addition, change of sex in the civil-status records not only leads to the recording of the person's "feeling" about his or her sex, but also has an impact on many aspects in the sphere of family law, labour law, social security etc., for example on retirement age. Therefore, given the wide-ranging impact of changes of sex in civil-status records, it is undoubtedly necessary to carry out a careful and professional procedure in this area.

Bearing in mind the standards stemming from the jurisprudence of the European Court of Human Rights and the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, as well as in the light of the Court's case-law concerning specifically Poland, no requirements can be considered as abusive in the Polish procedure. To the contrary, judgment of the European Court of Human Rights in the case of *Y. v. Poland* (no. 74131/14, 17 February 2022) proves the compliance of the Polish model with Article 8 of the European Convention on Human Rights.

As regards footnote 52, according to the prevailing jurisprudential line, if both parents are deceased, a guardian should be appointed by the court and he/she acts as a defendant.

Re paragraphs 41-42 of the ECRI's report

The situation of intersex children or adults was not discussed by ECRI at any point with the Polish authorities. The information provided in paragraphs 41 and 42 of the ECRI's report is vague and general to the extent that it is not possible to verify it. Therefore, the ECRI's findings in this respect should be considered as uncorroborated and prepared without appropriate dialogue with the authorities.

With reference to allegations of discrimination and condescending treatment of intersex children in schools, as contained in paragraph 41 of the ECRI's report, it should be noted that in accordance with the Polish law, every student, regardless of sex, should be safe at school and protected from

² https://www.facebook.com/story.php?story_fbid=512200087610880&id=100064626792038

degrading treatment and sexual abuse. Statutory regulations governing education clearly stipulate that the teacher, in his/her teaching, education and care activities, has the duty to be guided by the welfare of the pupils, care for their health and moral and civic attitude, showing respect for the personal dignity of the pupil (Article 5 of the Act of 14 December 2016 – Education Law). The teacher also has the duty to support each pupil in his/her development and to take care of the formation of pupils' moral and civic attitudes in accordance with the idea of democracy as well as peace and friendship between different peoples, races and worldviews (Article 6 of the Teachers' Charter Act of 26 January 1982). These rules apply equally to all subject teachers, educators, catechists or priests, and all these persons are subject to disciplinary responsibility for misconduct. Pedagogical supervision over the work of teachers and priests in the school is exercised by the school's principal, who may draw appropriate consequences if the teacher or catechist does not comply with the provisions of the above-mentioned Acts and the Convention on the Rights of the Child. A pupil or his/her parents, the parents' council or the school's student self-government may address the school's principal in all school matters. They may/should report to the principal any problems concerning inappropriate behaviour of teachers and priests and their failure to comply with pupils' rights. The school principal takes care of students and creates conditions for their harmonious psychophysical development as well as performs tasks related to ensuring the safety of children and teachers during the activities organized by the school.

The allegations made in paragraph 41 of the ECRI's report that surgeries on young children are carried out without proper safeguards and without adequate information being provided to parents, do not refer to any reliable research in support. Likewise, the claims by undefined interlocutors, mentioned in paragraph 42 of the ECRI's report, alleging that more than half of the surgeries performed in recent years on children with so-called variations of sex characteristics were not therapeutically necessary, do not seem to be based on any analysis of the medical data or any credible research, as no source of that information has been given in the report. Therefore the Polish authorities reject the above claims as non-credible and unsubstantiated. It should also be clearly stated that according to the Act of 5 December 1996 on the Professions of Physician and Dentist, the doctor is obliged to practise his/her profession in accordance with the indications of current medical knowledge, in line with methods and means available to him/her for the prevention, diagnosis and treatment of diseases, as well as in accordance with the principles of professional ethics and with due diligence. Any misconduct on the part of doctors may be reported to the Ombudsman for Patients' Rights or to prosecution authorities.

The statement in paragraph 42 of the ECRI's report that "many" medicines used by intersex people are not covered by the public health insurance is not based on facts. To the Ministry of Health's knowledge, the availability of hormonal products on the Polish market is generally guaranteed and in the last sentence of paragraph 42 it would be more correct to state that only some of the medicines used by intersex people are not reimbursed by the public health insurance. The Ministry of Health also informs that the absence of reimbursed testosterone-containing drugs in any indication is not the result of discrimination against men or transsexual persons, but it is due to the fact that the Marketing Authorisation Holder (MAH) has failed to submit an application to the Minister of Health for reimbursement and fixing the official price. The following medicinal products containing testosterone are available on the market in Poland: Omnadren 250, Testosteronum prolongatum Jelfa, Nebido. The patient is able to obtain these medicinal products on the basis of a doctor's prescription (with 100% payment). At the same time, it should be noted that, according to the information available, by the decision of the Marketing Authorization Holder, the deliveries of the medicinal product named Undestor Testocaps have permanently been suspended from the market.

Re paragraph 46 of the ECRI's report

With reference to footnote 62, it should be noted that, precisely speaking, Article 53 of the 1992 Broadcasting Act does not govern the competences of the National Broadcasting Council but enumerates the legal provisions for the breach of which the Chairman of the National Broadcasting Council obligatorily imposes financial penalties. Moreover, the sanctions related to the violations of *inter alia* Article 47h and Article 47o are included in Articles 53c and 53e of that Act, respectively.

Re paragraph 11 of the summary and paragraph 50 of the ECRI's report

With reference to the allegation contained in paragraph 50 of the ECRI's report that verbal abuses based on grounds of "sexual orientation, gender identity and sex characteristics" can hardly be

considered as a criminal offence, it should be stressed that depending on the factual circumstances and specific contents of the statements in question, they may qualify as criminal offences on the basis of e.g. Articles 190, 212, 216 or 255 of the Criminal Code.

Paragraph 50 of the ECRI's report presents a one-sided and selective picture of the situation related to hate speech by political leaders or other politicians. It links the problem of hate speech with the ruling government coalition only but omits cases of hate speech on the part of other political forces in Poland. The ECRI's report also completely ignores the widespread problem of hate-speech against Christians, including priests, in Poland. Due to its one-sided perspective and selective presentation of facts, paragraph 50 has missed, unfortunately, the opportunity to contribute to solving the problem of the generally polarised public debate in Poland. See also comments on paragraph 56 of the ECRI's report.

Re paragraph 18 of the summary and paragraphs 51 and 63 of the ECRI's report

With reference to recommendations included in paragraph 18 of the summary and paragraphs 51 and 63 of the ECRI's report, the Polish authorities reiterate that crimes committed due to the motives related to sexual orientation, sexual identity and sex characteristics are already criminalised by the Criminal Code. The Criminal Code ensures a fully universal character of protection of every individual and group at risk of any discriminatory conduct. To consider that any new factual situation requires amending the Criminal Code and introducing new provisions addressing it explicitly would actually undermine the universal character of the protection offered by the Code and would lead to endless amendments to respond, in a casuistic way, to more and more new situations. This in turn would negate not only the principle of legal certainty and stability of the criminal law but also the protection of victims as such. In this context, it should be recalled that in 2015 ECRI recommended adding only sexual orientation and gender identity to prohibited grounds of the Criminal Code. As soon as 8 years later the catalogue of prohibited grounds has been expanded by ECRI, which recommends adding "sex characteristics" to it as well.

Re paragraph 52 of the ECRI's report

Paragraph 52 of ECRI's report contains untrue information or misinterpretation of statements of political leaders as allegedly "delegitimising LGBTI persons". The fact that the statements in question referred to "ideology" should be understood in the way that they were not intended to be addressed to individual LGBTI persons and thus should not be treated as "delegitimising LGBTI persons as belonging to communities". The report ignores the fact that ruling politicians clearly distinguish LGBTI people (who are protected by the constitutional principle of equality and prohibition of discrimination) from a certain "ideology" understood as a narrative used for political struggle in order to undermine traditional institutions (the Church, the State, family, school) as allegedly archaic and homophobic. The President of the Republic of Poland, referred to in paragraph 52, has repeatedly stressed that dignity and respect are due to all people, and he has often spoken in favour of tolerance, equality and diversity not only in the context of counter-speech against anti-Semitism. Therefore, the way in which his approach was summarised in paragraph 52 of the ECRI's report is unfair and contrary to facts.

Re paragraph 53 of the ECRI's report

The Polish authorities share the finding in paragraph 53 of the ECRI's report that the Polish law contains all necessary legal provisions in the context of anti-Semitic hate speech and other forms of hate speech based on religion. They also stress that constant measures are being taken at the level of the police and prosecution service to ensure their appropriate and consistent implementation.

The Polish authorities also draw attention to the research, educational, information and commemorative activities, as well as publications and popular-science materials prepared by the Institute of National Remembrance. Numerous research and scientific works, publications and exhibitions of the Institute are devoted to the Jewish minority or outstanding personalities from the Jewish minority, due attention is also paid to other cultures and religions. Among many examples, one could mention here the Institute's annual peer-reviewed scientific journal "Polish-Jewish Studies", which publishes scholarly work in English and Polish on all aspects of Polish-Jewish relations in the 20th century, and the organisation of study visits of representatives of Jewish communities from the United States of America, the aim of which is to familiarize the participants with the 900-year history of Poles and Jews as well as the history, culture and political

situation of Poland. They provide an opportunity to present the Polish perspective on Polish-Jewish relations, Poland's priorities and contemporary interest in Jewish culture in Poland.

Re paragraph 54 of the ECRI's report

Contrary to the allegations of some undefined civil society interlocutors, referred to in paragraph 54 of the ECRI's report, the statistics made available to ECRI by the Polish authorities prove that the procedure before the relevant ethics committee of the Parliament functions effectively and there have been many cases of sanctions imposed on parliamentarians for hate speech. The fact that the right of appeal is provided in this procedure should not be a subject of criticism as this is a basic human right standard of any procedure in which a sanction may be imposed on an individual, required also in the jurisprudence of the European Court of Human Rights. Not even a single example has been given by ECRI to show that appeals from members of the ruling party are upheld in the Sejm. The example of the resolution adopted by the Sejm ethics committee, quoted in paragraph 54 of the ECRI's report, is misplaced. In fact, it does not concern a case in which an appeal was lodged or allowed, so the case does not prove the arguments for which it is referred to, but rather shows the opposite, *i.e.* that the procedure in the Sejm functions effectively.

Contrary to what is further alleged in paragraph 54, according to the legal provisions in force, the resolutions may be adopted by the relevant ethics committees irrespectively of whether the offending MP is willing to apologise or not. As far as the level of the penalty is concerned, it should be noted that given their very nature and the requirements stemming from Articles 6 and 7 of the European Convention on Human Rights, liability based on the code of ethics and the range of sanctions available must be limited because the parliamentary procedure in which they are applied is not accompanied with safeguards typical for criminal or civil procedures. Genuinely deterring sanctions are the domain of the criminal law and not of this kind of procedures. Therefore, the criticism voiced by some undefined civil society interlocutors is ill-founded.

Under the Polish Constitution, in the event of infringement of the rights of third parties a parliamentarian may be held liable with the consent of the Sejm or the Senate, respectively. In Polish law, even a statement protected by parliamentary immunity, insofar as it violates the rights of third parties, is subject to civil and criminal liability. It should also be borne in mind that statements made by a parliamentarian are always accountable to the relevant chamber, and this, on the one hand, protects the rights of the chamber in line with the democratic principles, and on the other hand, does not create a sense of impunity on the part of a deputy or senator.

Re paragraph 56 of the ECRI's report, also in conjunction with paragraphs 50 and 52-55

With reference to the recommendation in paragraph 56 of the ECRI's report to encourage religious leaders, the Polish authorities cannot commit themselves to taking measures that would breach the autonomy and independence of religious communities or would interfere in the religious doctrines or teaching of any church contrary to Article 9(1) of the European Convention on Human Rights. In Poland, all churches and other religious associations enjoy autonomy and independence. Article 25(3) of the Constitution explicitly provides for the mutual independence and autonomy of the State and religious organisations, which is an important guarantee of religious freedom. Moreover, statements of religious leaders should not be interpreted in a distorted way as hate speech, if in fact they are based on the doctrine of a particular church or religious association. In a democratic state the public authorities cannot unduly interfere with the doctrine and teaching of religious unions, as it would violate religious freedom.

The Polish authorities also note the fundamental imbalance in the recommendations included in paragraph 56 and in the ECRI's report in general. Namely, the problem of hate speech is noticed and referred to from the perspective of homophobic or racist statements only. Yet, hate speech targets various persons and groups in Poland. The report reflects asymmetric approach that protects only some selected social groups, while ignoring hate speech against other people (e.g. people who think or believe differently to what is perceived as so-called "politically correct"). The examples of hate speech have been selected in the ECRI's report to reflect only the statements targeting the groups of special interest to ECRI while frequent cases of manifest hate speech targeting e.g. persons of conservative worldview have been utterly ignored. The report widely criticises the representatives of the ruling coalition but completely omits any cases of hate speech on the part of the opposition, without trying to achieve impartiality and objectivity of ECRI's findings and recommendations.

Moreover, the report completely omits the growing problem of hate speech and hate-motivated violence on the grounds of religion against Christians. The available statistics of the police and the prosecution authorities as well as the research conducted by various NGOs confirm sharp upward trend of crime in the field in question. On the website of the OSCE³ one can find a table with incidents in 2021 reported by other sources where the figure for anti-Christian hate crime was the highest of all. Not even a single sentence was however dedicated to this problem in the ECRI's report. It is regrettable that ECRI omits the worrying phenomenon of the growing anti-Christian hate crime in Europe, although this problem has been increasingly noted by e.g. the OSCE (see e.g. OSCE/ODIHR Meeting Report on "Addressing Intolerance, Discrimination and Hate Crime: Responses of Civil Society and Christian and Other Religious Communities", Geneva, 22–23 October 2019⁴).

As a result, asymmetry is created by the ECRI's report, i.e. some groups are *de facto* protected against any critical debate, while others may be the subject of even the sharpest criticism and hate speech that is excused under the pretext of pluralism and freedom of expression. Such an approach may be described as cancellation culture. Without questioning the need to tackle appropriately hate speech targeting LGBTI persons or racist hate speech, protection should be advocated also for other persons and in all instances of hate speech, including those targeting the majority groups. Unfortunately, paragraph 56 of the ECRI's report has missed this opportunity.

The fact that ECRI readily expresses concern or appreciation regarding activities aimed at combating anti-Semitism or emphasises the importance of good practices of cooperation with Muslims, while at the same time it completely ignores and neglects the situation of Christians, is therefore of concern to the Polish authorities.

Re paragraph 57 of the ECRI's report

The Polish authorities share the opinion of ECRI that effective investigations are held into case of anti-Semitic hate speech. However, with reference to the remarks alleging bias and political influence on the work of the prosecution authorities in other cases, it should be stressed that in conducting criminal proceedings and issuing substantive decisions the prosecutors may rely only on the law in force (the relevant Codes). The prosecutors are independent in the performance of statutory acts, and exceptions to this rule are strictly regulated by law. The conviction of an accused person is decided solely by an independent court.

As regards allegations concerning the discontinuation of some of the criminal proceedings, it should be recalled that injured persons and State, local or social institutions notifying the crime are entitled to lodge an appeal with the court against decisions refusing to institute investigation. Parties to the proceedings and State or local institutions notifying the crime may appeal against decisions discontinuing the investigation. The court may quash the prosecutor's decisions refusing to institute or discontinuing proceedings (Article 306 of the Criminal Procedure Code).

Representatives of civil society, including NGOs, have the right to criticise public prosecutor's decisions. This, however, does not mean automatically that all their allegations are correct and should automatically be recognised as legitimate by ECRI. It would seem appropriate for ECRI to base its findings on credible research based on examination of the particular circumstances of the respective cases rather than on opinions of some undefined interlocutors representing only one part of the Polish society. There are also other opinions present in the Polish society, for instance those complaining about a too-lenient treatment by courts of LGBTI activists accused of hate speech targeting religious leaders. For example, many critical remarks among a large part of Polish society⁵ were triggered by the acquittal of an LGBTI activist on a religion-based hate speech case concerning a happening in 2019, in which the said LGBTI activist had simulated the throat-slitting of an archbishop (this simulation was realistic to the extent that even imitation of blood was used). The court found the activist not guilty of the charge. This incident, as well as public voices criticizing the acquittal in the case concerning the alleged mock killing of a clergyman, have not been noted by ECRI. This may reinforce the already visible expectations of preferential and more favourable treatment for LGBTI activists, even when their activism takes the form of aggressive

³ <https://hatecrime.osce.org/poland>

⁴ The meeting report is available at <https://www.osce.org/files/f/documents/b/8/450598.pdf>

⁵ See e.g. <https://pch24.pl/drag-queen-symulowal-podciecie-gardla-abp-jedraszewskiego-sad-wydal-skandaliczny-wyrok-i-go-uniewinnil/>

or pushy actions and incitement to unlawful behaviour, including hate speech and hate crime. On the other hand, it can be assumed that if the situation had been the opposite, *i.e.* if the murder of an LGBTI activist had been simulated in a similar way, the perpetrator would most likely have been punished by the court, or otherwise the court's decision would have met with a considerable international criticism.

It should also be noted that numerous steps are taken by the Polish authorities to increase the effectiveness of investigations carried out by prosecutors (and the police). Detailed information on these measures was submitted to ECRI. Moreover, the statistical data clearly demonstrate that compared with 2015, the number of bills of indictment and applications for a convicting judgment actually rose in 2016-2021 for hate crimes under Article 257 of the Criminal Code and in 2018-2021 for the crimes under Articles 126a and 256.

Finally, it is worth emphasising that apart from criminal prosecutions launched in cases of anti-Semitic and other hate crimes and hate speech, the Institute of National Remembrance also carries out interventions in cases of distortion of modern history constituting racial hatred, xenophobia, anti-Semitism or the Holocaust denial. It also undertakes many other activities aimed at promoting historical truth and raising awareness of the threats posed by totalitarianisms and anti-Semitism – see comments related to paragraphs 10, 53 and 60 of the ECRI's report.

Re paragraph 58 of the ECRI's report

As regards the decisions of the National Broadcasting Council concerning seven complaints about alleged racist content in the period 2015-2022, as mentioned in paragraph 58 of the ECRI's report, it should be stressed that the Council is only authorised to act in the limits of the binding law. It has not been shown that the decisions of the Council were not correct. Moreover, the programme control of broadcasters is only of *ex post* character. In Poland, any *ex ante* and preventive interference with the contents of the broadcasted programmes and auditions is prohibited by the Constitution (as stated in the first sentence of Article 54(2): "Preventive censorship of the means of social communication and the licensing of the press shall be prohibited.").

Re paragraph 59 of the ECRI's report

All cases of racist assaults are investigated by the police with due diligence and always in the same manner specified in the applicable law – regardless of the victim's sexual orientation, religion or colour and other characteristics. The police participates in projects regarding multiculturalism and takes efforts to ensure that police officers are properly prepared to respond to hate crimes.

Re paragraph 60 of the ECRI's report

Any case of behaviour breaching the law during mass events, including football matches, is subject to an individual assessment and legal qualification. Although the police is not directly involved in securing *e.g.* football matches, it supports the organizers and the civil security services. In this respect, the police cooperates regionally with football clubs and sports associations. In case of racist behaviour prohibited by criminal law, the police takes the relevant activities: recordings are secured and perpetrators of racist crimes are identified. The ECRI's recommendations, *e.g.* the General Policy Recommendation no. 12 on combating racism and racial discrimination in the field of sport, are taken into account.

Racist cases are treated seriously. They are qualified as acts of hooliganism with racist motives, which has an aggravating impact on the level of penalty. In paragraph 60 of the ECRI's report it is noted that police tend to consider racist chants as hooliganism rather than racism. It should be explained that the fact that the police treats such cases as hooliganism only confirms that they are actually treated more seriously than ordinary crimes, and not more leniently than the latter. This is explicitly regulated by the Criminal Code – see Articles 41b(1), 57a(1), 69(4) and 115(21). In accordance with the Criminal Code, in cases of crimes involving hooliganism the court is obliged to pass a sentence to the offender at a level not lower than one and a half times the statutory minimum provided for the offence imputed to the offender and may pass a conditionally suspended sentence only in particularly justified cases.

Among the recent examples of the involvement of the National Police Headquarters (*Komenda Główna Policji*) in actions against racism in sport, the honorary patronage⁶ of the Police Commander-in-Chief over the XXIII football match "No to racism", played on 10 September 2022,

⁶ <https://www.policja.pl/pol/aktualnosci/222793,XXIII-mecz-Nie-dla-rasizmu.html>

can be mentioned. The police has also issued a spot dealing with hate crimes⁷. The Polish authorities also informed ECRI of many other initiatives of the police aimed at combating and preventing hate crime.

Finally, it is also worth noting that in its educational and information activities, publications and popular-science materials, the Institute of National Remembrance has often commemorated well-known athletes, emphasizing their patriotic attitudes and merits for the country and holding them up as examples in promoting human values. An example of the activities undertaken by the Institute in this area is the recent campaign "From Champs to Heroes", which shows patriotic and human attitudes presented during World War II by pre-war footballers or athletes representing Jewish minority or those helping Jews during WWII⁸.

Re paragraph 65 of the ECRI's report

The Polish authorities should like to supplement the information given in paragraph 65 of the ECRI's report and recall that in each of the district prosecutor's offices (*prokuratura rejonowa*) designated to conduct proceedings in hate crime cases, two prosecutors are responsible for the processing of such cases. At the level of each circle and regional prosecutor's offices (*prokuratury okręgowe i regionalne*), one prosecutor is designated as a consultant. All prosecutors are obliged to apply the Prosecutor General's written order of 2014 providing guidance as to how to investigate hate crimes. The compliance with these rules is subject to internal control and supervision carried out in the prosecution service on a permanent basis.

Re paragraph 19 of the summary and paragraphs 66-67 of the ECRI's report

The allegation in paragraph 66 of the ECRI's report about deprioritising the investigation and prosecution of hate crimes has a purely polemical character and does not find confirmation in the statistics of the National Public Prosecutor's Office. In fact, the statistical data provided to ECRI demonstrate that compared with 2015, the number of bills of indictment and applications for a convicting judgment actually rose in 2016-2021 for crimes under Articles 118 and 119(1) of the Criminal Code. A growing trend in the number of bills of indictment and applications for a convicting judgment is also visible for hate speech, notably under Articles 126a, 256 and 257 of the Criminal Code.

Furthermore, the allegations of deprioritisation are contradicted by the fact that special organisational arrangements in the prosecutor's offices continued to exist after March 2016 to ensure effective conduct of proceedings into hate crimes. These allegations are also contrary to the fact that dedicated guidelines concerning the conduct of such cases still applied and were binding upon prosecutors. Moreover, it should be recalled that decisions to discontinue investigation are subject to judicial review.

With reference to the allegations included in paragraph 66 about the lack of compulsory or optional training courses for **prosecutors and judges**, it should be stressed that the relevant training of prosecutors and judges continues to be a statutory task implemented by the National School of Judiciary and Public Prosecution (*Krajowa Szkoła Sądownictwa i Prokuratury*).

In June 2017, a project called "Prevention of and fight against cybercrime" (co-financed by the European Social Fund under the Operational Programme Knowledge, Education and Development 2014-2020) was launched. One of the stages of the project was the development of an e-learning course entitled "Methods for investigating offences committed using the Internet and information systems". Part of the third module of the course was lesson no. 6 "Hate Speech on the Internet".

In the years 2018-2022, the National School of Judiciary and Public Prosecution organised four trainings for judges and prosecutors in hate crimes and hate speech, especially the cybercrime, in which 629 persons participated. In the same period, it organised six trainings concerning issues of non-discrimination in the practice of administration of justice, in which 551 persons participated.

⁷ <https://policja.pl/pol/kgp/biuro-prewencji/wydzial-profilaktyki-sp/mowa-nienawisci-hejt-pr/79488,Mowa-nienawisci-hejt-przestepstwa-z-nienawisci.html>

⁸ More information is available at <https://ipn.gov.pl/pl/historia-z-ipn/174057,Bohaterowie-z-boiska-nowy-cykl-Institutu-Pamieci-Narodowej.html>, posts are published on Facebook, compare e.g. <https://www.facebook.com/ipngovplEng/posts/513679627462864> <https://www.facebook.com/ipngovplEng/posts/511950930969067>

Two trainings are planned in 2023: in “Combating crimes concerning hate speech committed using the Internet” and in “Evidence from an expert opinion in the field of religious studies”. Both trainings have been indicated as aimed at implementing obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. The first of these trainings will cover issues related to combating hate speech, including aspects of non-discrimination, while the second, aspects related to non-discrimination.

In the period from 2014 to 2022, the National School of Judiciary and Public Prosecution also organised in-house specialist trainings for prosecutors called “Prosecutors and hate crimes”. As part of these trainings, workshops were held during which particular attention was paid to the identification of hatred and recognising it as a motive of crime. On the training platform of the Council of Europe HELP Programme, an e-learning course addressed exclusively to Polish prosecutors has been made available in Polish. The course is called “Hate Crime – Hate Speech Poland 2020”. In addition, on-line trainings were organised in “Combating hate speech crimes committed via the Internet”. Detailed information on these trainings was submitted to ECRI.

The National School of Judiciary and Public Prosecution also enabled Polish judges and prosecutors to take part in international training events dedicated to the issue of hate speech; for instance, 10 persons participated in the European Judicial Training Network’s trainings in 2021 and 2022 entitled “Anti-Semitism and Hate Crimes”, and 4 persons attended the training organized by the Academy of European Law ERA entitled “Online Hate Speech: Legal and Policy Developments”.

In the approved guidelines for the Training Schedule of the National School of Judiciary and Public Prosecution for 2024, training in the subject of “Combating hate crimes in Polish criminal law” is included. Specific issues to be discussed during this training will cover hate crimes in the Polish criminal law, methodology for dealing with hate crime cases, rules on the imposition of penalties for hate crimes, and a review of national and international case-law. The training will be addressed to judges and junior judges adjudicating in criminal divisions of courts, assistants to judges adjudicating in these divisions, as well as prosecutors, junior prosecutors and assistant prosecutors.

The School does not organise compulsory training for prosecutors but presents an offer of trainings from which the addressees can choose the courses of interest to them. Nevertheless, there is a general obligation for prosecutors to improve their professional qualifications under Article 98 of the Act of 28 January 2016 – the Law on the Prosecution Service, which states that a prosecutor is obliged to constantly improve professional qualifications, including to participate in training and other forms of professional development. Moreover, the National Public Prosecutor’s Office informs that the training in the form of an e-learning course called “Hate Crime – Hate Speech Poland 2020” was compulsory for all prosecutors appointed in the respective units of the prosecution authorities to conduct proceedings in such cases as well as for consultants and coordinators for such cases at the level of circle and regional prosecutor’s offices. The other prosecutors and junior prosecutors had an opportunity to attend the course. According to the available data, by the end of June 2020, 149 prosecutors had completed this training and 8 more persons had declared to attend the training within the following month.

As far as the training for the **police officers** is concerned, it should be noted that a training in combating hate crimes also constitutes part of the mandatory initial (basic) training for all newly admitted persons to the service in the police. In its framework, basic concepts connected *inter alia* with hate crimes are discussed (*i.e.* tolerance, discrimination – direct and indirect, xenophobia, racist violence, hate speech etc.). The topics covered also include stereotypes and bias as the determining factor of discriminatory behaviours, prevention of discrimination, characteristics of hate crime (perpetrators and their *modus operandi*, victims), police procedures regarding hate crimes (legal classification of incidents, dealing with hate crime victims) and the prevention system (community policing).

As far as in-service training in hate crimes is concerned, even though it does not cover all police officers, it is systematic, wide-ranging and addressed to the relevant police officers. In voivodeship headquarters of the police (including the Capital Police Headquarters in Warsaw), selected police officers (trainers) conduct local vocational training in combating hate crimes based on an 8-hour curriculum. In addition, these officers are responsible for initiating and implementing other trainings in combating hate crimes. Moreover, in the framework of the central vocational training, this topic is also included as part of the curriculum of a specialist course in conducting classes in preventing and combating hate crimes, which is carried out by the Police Training Centre in

Legionowo and is fully consistent with the TAHCLE programme (Training against Hate Crimes for Law Enforcement) designed and implemented by the OSCE/ODIHR. The course prepares police trainers to conduct classes as part of local professional development in preventing and combating hate crimes for officers from organizational units of the police.

In voivodeship police headquarters (and in the Capital Police Headquarters in Warsaw) there are also properly trained coordinators for the fight against hate crimes who play an educational and knowledge-sharing role for all other police officers from the whole voivodeship (and the Capital Police Headquarters in Warsaw).

More information on the training for police officers was submitted to ECRI. These activities are continued – see e.g. information on the coordinating and training meeting organised for voivodeship coordinators for hate crimes in November 2022⁹. One of the topics tackled concerned symbols of hatred demonstrated in the public space. Representatives of OSCE/ODIHR were also invited. It should be noted that these meetings could be resumed only after the restrictions related to the COVID-19 pandemic had been lifted.

In sum, the trainings and courses – including compulsory ones – in the effective investigation and prosecution of hate crimes for police officers and prosecutors are already provided. The courses in the handling of hate crimes are also available to judges. Therefore, the statements alleging the lack of compulsory or other training for prosecutors, judges or police officers are unfounded.

Re paragraph 68 of the ECRI's report

In addition to the information included in paragraph 68 of the ECRI's report on the support provided for victims of crime by the Victims and Post-release Assistance Fund (also called the Justice Fund), it should be noted that a special project aimed at analysing and counteracting hate crime committed on grounds of religion has been financed by the Fund since 2019, which addresses inter alia the following acts: physical attacks on believers, destruction and insult of places of worship, destruction and insult of religious symbols and objects of religious worship, limiting the public profession of faith, discrimination on the grounds of religious beliefs and incitement to hatred on the basis of religious differences or insulting a group of people or a person because of their religious affiliation. The project is run by the Pro Futuro Theologiae Foundation. The aim of the project is to raise public awareness of violations of religious freedom and crimes committed on grounds of religion, identify and prevent the mechanisms of their occurrence and respond to acts of insult, discrimination and hatred against believers. As part of the project, an information and consultation centre was established to provide support to victims who have experienced violations of their religious freedom. Within the framework of the project, an online map of violations of religious freedom was created, presenting reported cases of crimes and discrimination on the basis of religion. According to the annual reports prepared within the framework of this project, there has been an increase in the number of reported violations of religious freedom in recent years.

It would also be worth noting that in July 2022 the Government Programme for Counselling Organisations Development Support for 2022-2033 was adopted at the initiative of the Chairman of the Public Benefit Committee, under which organisations supporting victims of hate speech or hate crime may also apply for funds

Re paragraph 76 of the ECRI's report

Polish language courses for refugees (mainly from Ukraine) are financed not only with EU funds, but also through civil society development programmes managed by the National Freedom Institute – Centre for Civil Society Development, in particular the Government Programme for Civil Initiatives Fund NEWCIF for 2021-2030. Offers aimed at implementing activities for war refugees from Ukraine are rewarded with additional strategic points, but projects concerning other refugees are also supported. Most applications concern the second stage of assistance, i.e. support for integration activities and processes (work counselling, psychological and therapeutic assistance, sports and language classes).

As an example, a project “Dayroom Stop for Refugee Children” (*Przystanek Świetlica dla dzieci uchodźców*), run by the Foundation for Freedom and subsidised with the amount of PLN 40,000

⁹ <https://policja.pl/pol/kgp/biuro-kryminalne/aktualnosci/225760,Odprawa-dotyczaca-przestepstw-z-nienawisci.html>

under the 2021 edition of NEWCIF, could be mentioned here as a good practice. The target group of the project are children and young people living in the Centre for Foreigners in Dębak near Warsaw, mostly persons coming from places of recent armed conflicts: Chechnya, Ukraine, Kyrgyzstan, Uzbekistan, Georgia and other countries of the Caucasus, Central Asia, the Middle East and Africa. The project seeks to support learning and consolidating vocabulary by means of board games and other teaching materials, as well as learning letters/improving reading skills (through riddles, quizzes, etc.).

Moreover, it would be useful to inform that in 2015 “Okno na Wschód” Foundation, a regional partner of the Solidarity Corps (under the Programme for Support and Development of Long-Term Volunteering for 2018-2030, operated by the National Freedom Institute), created the first free e-learning platform enabling Russian and Ukrainian speakers to learn Polish. It has become the most popular tool for learning Polish in the East. There are more than 100 lessons available for learning Polish for the level A1 to B2. The creation of this e-learning platform was funded by the Ministry of Foreign Affairs.

Re paragraphs 79 and 87 of the ECRI's report

With reference to the comments made in paragraphs 79 and 87 of the ECRI's report on the lack of governmental housing programmes intended specifically for migrants and Roma, it should be clarified that migrants' and Roma's housing needs may be taken into account by the respective municipalities (towns) under the general housing programmes.

With the adoption of the National Housing Programme in 2016, there was a fundamental change in the government's approach to the housing market support. The governmental solutions focus on the development of social housing, including municipal housing, dedicated to the most needy, including migrants and refugees.

Meeting the housing needs of local communities is, however, the task of local government administration, which performs public tasks including, among others, managing its housing stock, on its own behalf and on its own responsibility. Creating conditions to meet the housing needs of the self-governing community belongs to the municipality's own tasks.

The municipality, on the terms and in the cases specified by law, provides flats by way of social lease and replacement flats and also meets the housing needs of low-income households. The municipal council adopts the rules for renting premises from its housing stock. In view of the above, persons belonging to a given municipality's local self-government community and interested in obtaining a flat from the municipal housing stock may apply for it on the basis of the rules applicable in that municipality.

The Ministry of Development and Technology, as a body of government administration, does not have the power to interfere in the way the municipality performs its tasks and powers. The Government Programme of Social and Community Construction, dedicated to supporting local government in solving housing problems, is based on the principle of incentives to take advantage – on a voluntary basis – of non-refundable grants for the implementation of local housing policy. It is not planned to change this approach. Moreover, government housing programmes do not differentiate their indirect recipients according to race or origin, income being the only criterion determining the housing support (regardless of the origin of the future tenant).

In order to support local self-governments in implementing local housing policy, the Social and Community Construction Programme (BSK) was created. It is based on the Act of 8 December 2006 on Financial Support for Certain Housing Projects. Under the BSK programme, municipalities may apply for non-repayable financial support of up to 80% of the investment costs for the creation of new and upgrading the existing housing stock. They can also acquire residential premises through cooperation with private investors. In addition, public funds support the activities aimed at improving the technical condition of buildings. In particular, financial support is directed towards thermal modernization and renovation of multi-family buildings. All managers or owners of multi-family buildings may apply for support under the TERMO programme, operating on the basis of the Act of 21 November 2008 on Support for Thermomodernisation and Renovation and on the Central Register of Emissivity of Buildings. The subsidy for municipalities may amount to up to 90% of the costs of the thermal modernization or renovation project. Support is directed on equal terms to all social and national groups and no changes in this regard are currently foreseen.

Re paragraph 84 of the ECRI's report

With reference to the recommendation in paragraph 84 of the ECRI's report to prevent any practices of sending Roma pupils to "special schools" for grounds other than children having established learning disabilities, it should be added that only and exclusively parents/legal guardians are authorised to make such a decision and sometimes there may be such a tendency among the Roma parents to choose special schools for their children as they may consider such schools more appropriate for their children (for instance due to previous experience in the family related to attending such schools, entitlement to additional related benefits, character of education at such schools etc.). The Polish authorities do not have the power to send Roma children to special schools. Legal measures taken by the Polish authorities, as well as measures related to awareness-raising of parents and staff of the psychological and pedagogical counselling centres, have led to a significant limitation of this practice among Roma families, as ECRI itself notes in its report.

The Polish authorities also draw attention to the detailed description of the current system included in the [comments](#) of the Polish authorities on paragraph 66 of the 5th report by ECRI¹⁰.

Re paragraph 13 of the summary and paragraph 87 of the ECRI's report

With regard to paragraph 87 of the ECRI's report it should be noted that the improvement of the housing situation of the Roma community is one of the main areas of action under the governmental Programme for Social and Civic Integration of Roma in Poland for 2021-2030. It states: "The key tool for improving the level of the group's integration is, broadly understood, education. Without improving the level of education, all actions carried out in other areas of community life are ineffective. One of the factors supporting education is the improvement of housing situation for the families living in the poorest material conditions that are, above all, a hazard to their life or health".

The Polish authorities are not aware of any cases of municipalities unduly terminating Roma residence in their territory and the case of the municipality trying to prevent Roma residence in its territory, mentioned in paragraph 87 of the ECRI's report, is the only one known to the authorities. That case should be treated as an isolated and exceptional one.

Moreover, it is most inaccurate to describe this case as "forced relocation of Roma". In fact, the Roma in question were consulted from the very beginning and were genuinely interested and willing to relocate. In parallel, another Roma family from the same municipality voluntarily moved to another municipality. The only problem that occurred in the case at stake was most probably due to the lack of appropriate consultation between the municipalities of Limanowa and Czchów. By judgment ref. no. III SA/KR 679/16 of 1 February 2017, the Voivodeship Administrative Court in Kraków declared as null and void the order no. 12/2016 issued by the Czchów Mayor and prohibiting occupation of the purchased buildings. Thus, it is clear that such actions are ruled out by the law in force and there are effective domestic remedies against them.

On a more general note, the Polish authorities consider that local conditions and the availability of property may be such that it would not be possible to offer Roma more suitable accommodation within a given municipality in a foreseeable time perspective. Therefore, providing the Roma inhabitants with improved accommodation in another municipality – on a voluntary basis – constitutes a fully legitimate solution and response to ECRI's recommendations to improve housing conditions of the Roma community.

Re paragraph 88 of the ECRI's report

In respect of the conditions in the Roma settlement in Maszkowice, mentioned in paragraph 88 of the ECRI's report, the Łącko Municipality has carried out works improving the quality of life of the inhabitants and many of these actions were actually conducted using the funds from the Roma Programmes: housing containers were purchased, electrical and ventilation repairs were carried out, bathrooms and residential buildings were renovated on a regular basis, the area and access road to the settlement were paved, a playground was created, the water supply infrastructure was rebuilt, the Primary School in Maszkowice was expanded with a gymnasium building and additional classrooms (1/3 of the school's pupils are Roma), Roma flats were equipped with basic household appliances and many minor works were carried out to improve the living conditions in the Roma

¹⁰ <https://rm.coe.int/government-comments-on-the-fifth-report-on-poland/16808b59ac>

settlement (a detailed list of actions taken by the municipality was submitted to ECRI). The Municipality cannot be blamed for (sometimes inadequate) maintenance of the effects of these investments by the inhabitants.

A highly complex formal and legal situation of the Roma settlement in Maszkowice should also be borne in mind, which also adds to the difficulties in solving the problems related to the living conditions. It is due to the fact that the settlement developed for decades in a place where the provisions of the local spatial development plan did not allow its creation (in the light of the applicable regulations). The ownership structure of this area is also very complex and highly mixed: the land is partly municipal, partly belongs to private persons, and partly is in the possession of the municipality or the State Water Holding "Polish Waters" (*Państwowe Przedsiębiorstwo Wodne Wody Polskie*).

As regards the initiation of proceedings by the Poviator Inspector of Construction Supervision for the Nowy Sącz Poviator (*Powiatowy Inspektor Nadzoru Budowlanego dla powiatu nowosądeckiego*) and the adoption of demolition orders in respect of some of the objects, one should bear in mind the security threat posed by the existing state of the settlement. Unfortunately, in 2016 there was a fire in one of the buildings in which a child died. The Mayor of the Łącko Municipality, the Municipality Office and the relevant municipal institutions conducted awareness-raising activities among the inhabitants informing them of the consequences and threats for their safety stemming from further uncontrolled expansion of the settlement. They pointed out that the construction of buildings/objects in the places freely chosen by the inhabitants, without paying attention to the security rules in force, constituted a significant danger for them. It was explained that such buildings did not meet the basic standards and requirements for residential buildings, posing threats to the lives and health of the people living in them.

Re paragraph 89 of the ECRI's report

In addition to the information on the positive actions of the Polish authorities in support of Roma inhabitants, mentioned in paragraph 89 of the ECRI's report, it is worth adding that the National Freedom Institute – Centre for Civil Society Development also supports NGO projects aimed at the socio-cultural integration of representatives of ethnic minorities, such as the project "Closer to each other – seniors' integration programme" (*Bliżej siebie. Program integracji seniorów*), implemented in the Łódzkie Voivodeship by Ethnos Social and Cultural Association in Łódź, in which representatives of the majority society (seniors of Polish origin) participate together with their peers of Roma and Jewish origin. The project was supported with the amount of PLN 150,000 under the 2022 edition of the Government Programme for Civil Initiatives Fund NEWCIF for 2021-2030¹¹.

Re paragraph 95 of the ECRI's report

Polish authorities consider the remark about the modest and time-limited support for Ukrainian refugees, included in paragraph 95 of the ECRI's report, as unfair and contrary to the facts. Actually, according to the OECD estimates, of all OECD members, Poland is the country that has provided and continues to provide the biggest support to Ukrainian refugees. The support by Poland for living costs, education and health of Ukrainian refugees in 2022 was estimated at EUR 8.36 billion.

On p. 98 (printed) of the OECD International Migration Outlook 2022 it is noted:

The majority of people fleeing Ukraine went to Poland, which has recorded more than 6 million border crossings from the country since February.

As of mid-September 2022, Poland is the main receiving country in absolute numbers with 1.38 million refugees from Ukraine recorded for temporary protection in the country (Figure 4.1). Poland is followed by Germany with about 1 million and the Czech Republic with more than 400 000 refugees.

On p. 104 (printed) it is noted:

Living costs

The biggest share of all costs in Europe are related to the provision of accommodation and financial subsidies to Ukrainian refugees. Based on the refugee population estimates

¹¹ More information on the project can be found at <https://ethnos.org.pl/blizej-siebie>

and the information collected on the financial support that people living in reception centres and private accommodation receive, as well as considering the financial transfers provided to hosting families, we can estimate that the total cost of providing housing and direct financial assistance in Europe is EUR 17.2 billion. The variation between countries, however, is significant. As expected, total costs are expected to be the highest for Poland at EUR 6.2 billion. In Germany, public expenditure on living costs is EUR 4.4 billion, while in Spain it is expected to reach almost a billion - EUR 981 million.

Education costs

...The cost of ensuring educational access to Ukrainian refugees is estimated at about EUR 5.1 billion. Countries bordering Ukraine and those with the largest Ukrainian diaspora (i.e. Czech Republic, Italy, Germany and Spain) are expected to have the highest costs. In the Czech Republic, different education costs are estimated at EUR 352 million. In Poland, total educational expenditure is expected to reach EUR 1.5 billion.

Total costs

In total, the mass inflow of refugees from Ukraine is estimated to cost the European OECD countries about EUR 26.6 billion in 2022 (Table 4.1). The related costs are expected to be over EUR 1 billion in five countries - Germany, Poland, the Czech Republic, Spain and Romania. Germany and Poland are estimated to bear more than 50% of all costs. The highest expenditure per refugee, however, is expected in Switzerland, Belgium and Luxembourg, while the lowest cost per capita are in Hungary, Greece and Romania¹².

Re paragraph 98 of the ECRI's report

In paragraph 98 of the ECRI's report it has not been specified which procedures for the recognition of diplomas of third country nationals are lengthy and costly. It should be noted that the validating university either recognises or refuses to recognise a diploma of graduation abroad as equivalent to the relevant Polish diploma and professional title within 90 days from the date of submission of the application meeting the formal requirements (this deadline shall not include the periods set for the submission of translations of documents and for passing examinations or for completing a traineeship). In March 2022, the Minister of Education and Science recommended that universities conduct proceedings as quickly as possible and waive the fees for the proceedings. At the request of an unemployed person or a person registered as a job seeker, a poviator governor (*starosta*) may finance the fee charged for the diploma validation procedure (*nostryfikacja*) or the procedure referred to in Article 327(3) of the Act of 20 July 2018 – Law on Higher Education and Science. Information on foreign diplomas is issued by the Polish National Agency for Academic Exchange NAWA free of charge. In addition, the KWALIFIKATOR system¹³ has been made available which provides for the possibility to self-generate written information about the diploma that is sufficient for persons applying for further education or employment in the professions that are not regulated.

Detailed information on the recognition for both academic and professional purposes is available at the website of the NAWA¹⁴. The Department for Academic Recognition (*Biuro Uznanalności Wykształcenia*) plays a role of the Polish ENIC-NARIC centre.

Re paragraph 99 of the ECRI's report

In respect of the recommendations included in paragraph 99 of the ECRI's report, the Polish authorities submit that the current regulations and procedures for recognising foreign diplomas and other qualifications are appropriate and in line with international standards. The proceedings are conducted smoothly. The provisions of the Act of 20 July 2018 – Law on Higher Education and Science provide for a procedure for confirming the level of education for refugees who do not possess a diploma of graduation from studies. This is a procedure adopted on the basis of the

¹² Detailed information can be found at https://www.oecd-ilibrary.org/sites/30fe16d2-en/1/3/4/index.html?itemId=/content/publication/30fe16d2-en&_csp_ =97175d429ae5e4e04cd3cccbbfc84945&itemIGO=oecd&itemContentType=book

¹³ <https://kwalifikator.nawa.gov.pl>

¹⁴ <https://nawa.gov.pl/en/recognition>

Convention on the Recognition of Qualifications concerning Higher Education in the European Region, done at Lisbon on 11 April 1997.

As regards the “European Qualifications Passport for Refugees” project, it should be noted that Poland joined the EQPR already on 9 May 2022. In September 2022, the National Agency for Academic Exchange in cooperation with the Council of Europe and the Ministry of Education and Science as well as the University of Warsaw, organised a conference promoting the project. First refugees staying in Poland were also interviewed and then issued with EQPR passports. The project was introduced by the representatives of the Council of Europe. Information on the project is published on the website of the National Agency for Academic Exchange in Polish, English and Ukrainian.

Re paragraph 100 of the ECRI's report

The Polish authorities reject the allegations included in paragraph 100 of the ECRI's report about any preferential treatment of war refugees from Ukraine based on ethnicity. They stress that the assessment of the treatment provided should bear in mind huge organisational challenges stemming from the sudden and massive influx of a great number of persons fleeing the war in Ukraine.

As far as the allegations of any different and negative treatment of nationals of Asian and African origin are concerned, they were plainly rejected as being the Russian propaganda by a European Union representative, the President of the European Council, who verified the situation on the ground – see for instance:

<https://www.consilium.europa.eu/en/press/press-releases/2022/03/02/remarks-by-president-charles-michel-after-his-meeting-with-prime-minister-of-poland-mateusz-morawiecki-in-poland/>

<https://tvpworld.com/58897356/reports-of-racism-at-eu-pl-ua-border-is-russian-propaganda-eu-top-official>

<https://www.polskieradio.pl/395/7785/Artykul/2915123,EUs-Michel-says-Russia-behind-reports-of-racial-discrimination-at-Polish-Ukrainian-border>

In the face of Russia's invasion against Ukraine on 24 February 2022, Poland offered real and immediate assistance to all those fleeing the hostilities. Such assistance was offered from day one.

For those fleeing the territory of Ukraine, special arrangements for crossing the state border were applied, i.e. permission to enter by special consent on humanitarian grounds. This concerned persons presenting themselves at the Polish-Ukrainian border who did not meet the entry conditions set out in the Schengen Borders Code, including due to the lack of the required visa, or even a passport. This was, however, associated with a considerably prolonged time of border clearance caused by the necessity to carry out a number of additional checks, often also the necessity to contact a diplomatic post of the foreigner's country of origin in order to confirm identity and citizenship in case of lack of ID documents. As a rule, consular staff did their best not to keep their citizens waiting for long, but the procedure was often hampered by the very high number of people fleeing the war.

Indeed, it should be remembered that the armed aggression of the Russian Federation against Ukraine triggered an unprecedented scale of the influx of refugees via the Ukrainian-Polish section of the state border. In the period between 24 February 2022 and 30 June 2022, a total of 4,228,679 foreigners were evacuated from the territory of Ukraine via the Polish-Ukrainian section of the state border, of whom third-country nationals represented 10% (408,143 persons). 170,993 foreigners (4%) evacuated from Ukraine did not have any travel documents, including 164,548 Ukrainian and 6,445 non-Ukrainian citizens. Identification procedures had to be conducted in respect of all these persons. Moreover, 1,414 declarations of the will to apply for international protection were received from third-country foreigners at the border (plus 142 applications or declarations from Ukrainian citizens).

This migration situation necessitated a significant increase in the involvement of the forces and resources of the Border Guard, both for border traffic control and in direct protection of the state border. By order of the Border Guard Commander-in-Chief (*Komendant Główny Straży Granicznej*), a significant number of officers from other Border Guard divisions, training centres and the Main Border Guard Headquarters were delegated to the Polish-Ukrainian section of the border in order to support the process of border control and identification. Municipal staff and many activists were

involved in providing the stream of travellers with assistance, including blankets and warm drinks. During the check-in process, the Border Guard strived to make border control as painless as possible.

It should be strongly emphasised that the colour of the traveller's skin did not affect the length of the check. If persons had ID documents and a confirmed right of stay on Ukraine, they were all able to enter Poland without any further delay. Verification of identity was carried out for all persons without appropriate identity documents, including Ukrainian citizens. The allegations of discrimination are thus manifestly ill-founded.

The Polish authorities consider that the verification of identity of all persons coming to Poland from Ukraine was fully legitimate and served e.g. the purpose of the further management of the migration flow and as a basis for the determination of eligibility of the incoming persons for services and assistance in Poland (which is linked *inter alia* with the date and place of entering Poland) as well as for security and public order considerations. It also constituted an important safeguard for all the persons crossing the border as it prevented a situation where a certain person could disappear (e.g. as a result of actions of criminal groups, human trafficking, etc.) with no confirmation that he/she had ever entered Poland/Schengen area. This verification did not violate any international standards and cannot be treated as discrimination. Moreover, the Polish authorities cannot be blamed for any prolonged procedures on the part of the Ukrainian authorities.

Finally, the Polish authorities provided considerable support to third-country nationals in organising voluntary returns to their homelands. The Border Guard sent letters to diplomatic missions of the countries concerned, informing about a possibility of organising voluntary humanitarian returns for their citizens fleeing the war in Ukraine. By 8 May 2022, the Border Guard had organised (in cooperation with Frontex) voluntary humanitarian returns for 730 third-country nationals.

In sum, the allegations of discrimination of any groups of persons fleeing Ukraine lack any grounds whatsoever.

Re paragraph 14 of the summary and paragraphs 102 and 103 of the ECRI's report

It should be noted that the amendment referred to in paragraph 14 of the summary and paragraph 102 of the ECRI's report concerns the situation of the illegal crossing of the border. In the ECRI's description of the amendment of 14 October 2021 to the Act of 13 June 2003 on Granting Protection to Foreigners in the Territory of the Republic of Poland, the international context in which it was adopted is completely omitted, *i.e.* the actions of the Belarusian authorities which deliberately invited people from other countries and then used them in a border action against Poland (and Lithuania).

The Polish authorities recall that the provisions of the Act on Granting Protection to Foreigners in the Territory of the Republic of Poland continue to apply. The possibility to leave an application for international protection without examination, introduced by the amendment of 14 October 2021, is optional and, prior to its application, the Head of the Office for Foreigners (*Szef Urzędu do Spraw Cudzoziemców*), *i.e.* the authority competent to consider applications for international protection, conducts a thorough analysis of the material.

Between 1 July 2021 and 31 October 2022, the Border Guard accepted for examination 7,367 first applications for international protection, involving a total of 11,676 persons. A significant proportion concerned persons who had entered Poland across the border from Belarus. By comparison, in the first half of 2021, merely 974 first applications for international protection were received, involving a total of 1,498 persons, and throughout 2020, the Border Guard received not more than 1,384 such applications, involving a total of 2,383 persons. Accordingly, following the outbreak of the migratory crisis at the Polish-Belarusian border in July 2021, the Border Guard accepted for examination actually thousands more new applications for international protection. Even if one takes into account that in the second half of 2021 a significant number of new asylum applications might have concerned also persons coming legally from Afghanistan and that the number of Belarusian citizens fleeing political persecutions remained high in both 2021 and 2022, still, the significant increase in the general number of asylum applications accepted for examination could partly be linked with the increased number of persons coming illegally from Belarus. Accordingly, the asylum procedures remained in operation also in respect of these persons. It contradicts the allegations that illegal immigrants from Belarus were denied any access to asylum

procedures. Proceedings for international protection were initiated upon request of many persons coming illegally from Belarus. Therefore, it is not appropriate to say that Poland denied them any such possibility.

Re paragraph 105 of the ECRI's report

As far as measures concerning non-governmental organisations acting for persons illegally crossing the border with Belarus are concerned, mentioned in paragraph 105 of the ECRI's report, it should be stressed that any activity on the part of NGOs that possibly breaches the existing legal framework is routinely examined from the point of view of the possible violation of the law in force. There is no discrimination in this regard and it is not relevant at which border the facilitation of illegal crossing takes place. All persons are equal before the law, therefore it is of no relevance whether a perpetrator is a member of an NGO or not.

On the other hand, some forms of support to NGOs working for refugees other than those coming from Ukraine are also provided by the authorities.

Firstly, under Article 400a of the Act of 12 December 2013 on Foreigners, institutional assistance is envisaged for foreigners who are in the return procedure but cannot be placed in detention or have been released from a detention centre for health reasons. The benefits granted cover social assistance as well as medical and psychological care. Based on an agreement signed between the Commander-in-Chief of the Border Guard and the "Dialog" Foundation based in Białystok, such foreigners are always admitted to the Saint Mary Magdalene Shelter in Białystok. The cost of providing institutional assistance incurred by the Border Guard in 2021 amounted to PLN 1,296,450 (for 296 persons), and in 2022, to PLN 623,900 (for 30 persons).

Secondly, the National Freedom Institute – Centre for Civil Society Development supports NGO initiatives for the benefit of migrants, notably in the framework of:

- the Government Programme for Civil Initiatives Fund NEWCIF for 2021-2030, and
- the Solidarity Corps - Long-Term Volunteering Support and Development Programme for 2018-2030 (regional and local partners of the Solidarity Corps coordinate volunteering for migrants).

As far as the support under the NEWCIF is concerned, apart from the support for NGOs working for Ukrainian refugees, the National Freedom Institute also funds NGO projects aimed at helping other migrants from outside the EU. For instance, in 2021 it supported a project called "Centre for Integration of Families of Foreigners" implemented by the "Dialog" Foundation in Białystok. The direct recipients of the project were families with migration experience living in the Podlaskie Voivodeship – persons coming from outside the EU and legally residing in Poland on the basis of a temporary or permanent residence permit and, above all, a permit for tolerated residence or a permit for residence for humanitarian reasons. This is a constantly growing group of migrants, mostly people coming from Belarus, Ukraine and Armenia. Other beneficiaries include persons granted protection in Poland (persons benefiting from refugee status or subsidiary protection status or those benefiting from temporary protection). Among the refugees in the Podlaskie Voivodeship, the main group are citizens of the Russian Federation (79%), mainly Chechens, as well as Ukrainians (19%), but individual refugees from Syria, Belarus, Sri Lanka, Libya, Tajikistan are also supported. The application for funds submitted by the "Dialog" Foundation referred to comprehensive support for the integration of the families of foreigners legally staying in the Podlaskie Voivodeship. In the framework of this project, the following activities were carried out: provision of advice and assistance to immigrants on administrative and legal issues and on issues related to legalization of residence (this aspect concerns mainly persons with tolerated stay), support in the process of education of children, youth and adults, and enhancing competence and legal awareness of foreigners related to access to the labour market. The project was implemented from 1 July to 31 December 2021 and was supported with the amount of PLN 48,400 under the 2021 edition of NEWCIF.

ECRI Secretariat
Directorate General of Democracy and Human Dignity
Council of Europe
Tel.: +33 (0) 3 90 21 46 62
E-mail: ecri@coe.int

www.coe.int/ecri

 [@ECRI_CoE](https://twitter.com/ECRI_CoE)

www.coe.int

The European Commission against Racism and Intolerance (ECRI) is a unique human rights monitoring body which specialises in questions relating to the fight against racism, discrimination (on grounds of “race”, ethnic/national origin, colour, citizenship, religion, language, sexual orientation and gender identity), xenophobia, antisemitism and intolerance in Europe; it prepares reports and issues recommendations to member States.