



Committee on the Elimination of Racial Discrimination

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).

Warsaw, 29 March 2021

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I. Information about the reporting institution

The Commissioner for Human Rights (the Commissioner) is a constitutional body appointed to monitor the observance and protection of human and civil rights. The Commissioner performs its role as a body independent of other public authorities. The powers of the Commissioner are set out in the Constitution of the Republic of Poland and in the Act of 15 July 1987 on the Commissioner for Human Rights. The Commissioner is appointed by the Sejm (the lower chamber of the Polish Parliament), and approved by the Senate (the higher chamber of the Polish Parliament) for a 5-year term of office.

The Commissioner performs the roles of National Human Rights Institution (NHRI/Ombudsman), the inspection body for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (National Preventive Mechanism – NPM), independent equality body (referred to in EU anti-discrimination directives) and independent body monitoring the implementation of the Convention on the Rights of Persons with Disabilities (CRPD).

In the course of performing its duties, the Commissioner for Human Rights takes into account the human rights protection standards set forth in international legal instruments, including the Convention on the Elimination of All Forms of Racial Discrimination.

The Commissioner is a National Human Rights Institution accorded “A status”.

In July 2019, prior to the 99th session of the Committee for the Elimination of Racial Discrimination, the Commissioner presented his observations and remarks on actions taken by Poland in 2014-2019¹ aimed at implementing the provisions of the Convention on the Elimination of All Forms of Racial Discrimination.

¹ The report can be accessed at:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fIFN%2fPOL%2f35563&Lang=en

II. Observations and remarks on implementation of the Committee's recommendations from 2019.

10 (a) The Committee recommends that the State party Provide the Commissioner for Human Rights of Poland, in particular its Department of Equal Treatment, with the human and financial resources necessary to enable it to fully discharge its mandates in an independent and impartial manner, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

1. The term of office of Poland's 7th Commissioner for Human Rights ended on 9 September 2020, but Parliament has not yet appointed his successor. A social-activist candidate, supported by 1,200 civic organizations, eight political parties and several university law faculties, has been negatively evaluated three times by the Sejm. The ruling coalition has nominated a deputy minister and MP, then – when he was rejected by the Senat (upper chamber of Parliament) – a deputy to the Sejm, both members of the Law and Justice parliamentary club (the senior partner in the ruling coalition), as candidates for the position of Commissioner.
2. A group of deputies to the Sejm from the ruling coalition submitted a motion to the Constitutional Tribunal calling upon the Tribunal to declare the legal provisions obliging the current Commissioner to continue performing his duties until the appointment of his successor to be unconstitutional². Nevertheless, similar regulations apply to other independent bodies, including the President of the National Bank of Poland and the President of the Supreme Audit Office, for the sake of maintaining institutional continuity. The Commissioner expressed his doubts as to the judges serving on the adjudicating panel. One of them, Justyn Piskorski, is a so-called “stand-in” judge, appointed to replace a judge who had previously been properly selected³. As for two other judges – Julia Przyłębska and Stanisław Piotrowicz – the Commissioner expressed reservations as to their impartiality. The Constitutional Tribunal will hold a session on the matter 12 April 2021.
3. The Commissioner as an institution is not being provided sufficient funding from the state budget to ensure the comprehensive and effective performance of all its statutory obligations. On the one hand, the scope of tasks the institution is charged with performing has been increasing; on the other hand, the financial resources provided the Commissioner for the purpose of discharging its tasks has been reduced. Regular cuts in the Commissioner's budget have left it short of funds necessary to cover current expenses – i.e. employee remuneration, electricity bills, computer licences (particularly

² Case file ref. no.: K 20/20, <https://ipo.trybunal.gov.pl/ipo/Sprawa?cid=3&sprawa=23320>.

³ Ruling of the Constitutional Tribunal of 3 December 2015, file ref. K 35/15; ruling of the Constitutional Tribunal of 9 March 2016, file ref. K 47/15; ruling of the Constitutional Tribunal of August 11, 2016, file ref. K 39/16; decision of the Constitutional Tribunal of January 7, 2016, file ref. U 8/15.

important for performing work remotely during the SARS-CoV-2 pandemic), security services, cleaning products, office supplies, fuel, printing services, translations, public surveys and training courses. In addition, starting in 2021, current expenses have been increased by the newly enacted requirement to make contributions to Employee Capital Plans, yet funding received by the Commissioner office is lower than it was in 2013. Due to budgetary constraints, the Commissioner has been unable to raise staff pay at the same pace as other institutions financed from the state budget. The low pay offered by the Commissioner has resulted in many highly qualified employees leaving their jobs and made it very difficult to recruit new people with similar qualifications. Moreover, Parliament reduced the personnel remuneration fund by PLN 745,000 in 2021 compared to 2020. As a result, the Commissioner Office does not have sufficient funds to fully secure the contracts it has concluded with its employees.

4. The purported increase in the Commissioner's budget stems only from the amount allocated for modernizing a historic building owned by the State Treasury at ul. Długa 23/25 in Warsaw, in which Commissioner has its Office. Therefore, when assessing the funds allocated to the Commissioner operations, one should take into account the funds allocated to the above-mentioned current expenditure (enumerated in point 3), excluding funds allocated to the modernization of the Długa 23/25 building (see the third line in the table, "Funds allocated for current expenses").

Table 1. Commissioner funding (in PLN)

	2015	2016	2017	2018	2019	2020	2021
Draft budget: funds requested	41 989 000	45 566 000	41 039 000	42 639 000	48.109.000	59 787 000	60 572 000
Financial plan: funds allocated	38 602 000	35 619 000	37 182 000	39 433 000	40 883 000	45 214 000	51 187 000
Funds allocated for current expenses, not counting funds allocated for building modernization	37 761 000	34 022 000	34 464 000	34 561 000	35 258 000	37 105 000	36 485 000

5. The task-based budget of the Commissioner Office includes the category of funds allocated for the performance of tasks relating to the protection of equal treatment and the mechanism for monitoring implementation of the Convention on the Rights of Persons with Disabilities. These activities, which include issues addressed by the Convention on the Elimination of All Forms of Racial Discrimination, are essentially

performed by the Commissioner with the help of its Department of Equal Treatment. At the end of 2020, the Department had 10 full-time employees, lawyers and 1 person dedicated to public surveys and 1 person providing administrative services. In the Commissioner's opinion, this is the minimum number of employees necessary to ensure performance of the tasks entrusted to the Department. The organizational separation of this department within the Commissioner Office, as in the case of the National Mechanism for the Prevention of Torture, is essential to ensure the Commissioner's effectiveness as an independent equality body, because it is conducive to the development of the necessary skills, knowledge and experience of staff⁴. These HR assets, in the face of inadequate funding, enable the institution of the Commissioner to carry out its mandate. The table below shows the financial plan taking into account all the expenses enumerated in point 3 above (including a proportionate part of the Długa 23/25 building modernization).

Table 2 Annual Commissioner funding for activities in the area of equal treatment (in PLN)

	2015	2016	2017	2018	2019	2020	2021
Financial plan - funds allocated	5 066 370	5 497 024	2 385 000	2 446 494	2 700 000	2 873 552	3 079 000

12 (c) The Committee recommends that the State party take effective steps to guarantee the independence of the judiciary and the National Public Prosecutor from political interference.

6. Since 2015, the independence of the judiciary has been systematically curtailed. Changes imposed on the functioning of common courts, administrative courts, the Supreme Court and the National Council of the Judiciary have consistently increased the influence of political factors on the judiciary as well as exerting pressure on individual judges. The defective statutory structure of the National Council of the Judiciary has led to numerous requests for preliminary rulings from Polish courts – including the Supreme Court and the Supreme Administrative Court⁵ – being submitted to the Court of Justice of the European Union (CJEU). The European Commission has also appealed to the CJEU in this matter, indicating that Polish law violates the general European and universal principles of judicial procedure, thus fails to guarantee everyone the right to have their cases heard before an impartial and independent court.

⁴ See: Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

⁵ The following cases C-487/19 (W.Ż.), C-508/19 (Prosecutor General), C-824/18 AB and others (National Council of the Judiciary), C-491/20 to C-496/20, C-509/20 and C-511/20.

7. Poland, however, has failed to execute numerous judgments already issued by European courts concerning reform of the Polish justice system⁶. The degree to which the law has been violated in procedures for nominating persons to judicial posts since 2018, in both the two newly established and the “old” chambers of the Supreme Court, was discussed in detail in the Supreme Court ruling of December 5, 2019, file no. III PO 7/18 (points 64-79, issued after the CJEU replied to the preliminary inquiries in cases submitted by A.K. and others), and in the Resolution appointing the members of the combined three chambers of the Supreme Court: Civil, Criminal and Labour and Social Security of 23 January 2020, file ref. no. BSA I-4110-1/20. Both judgments focus on a long list of violations that have had a real impact on the independence of the judiciary. These violations include:

- 1) premature termination of the constitutionally guaranteed 4-year term of office of previous members of the National Council of the Judiciary,
- 2) unconstitutional selection of 15 new judge-members of the National Council of the Judiciary,
- 3) insufficient independence of the National Council of the Judiciary from other public authorities,
- 4) initiating the nomination procedure to the Supreme Court with an act that has not become valid (the case is pending at the Supreme Administrative Court under file no. II GOK 2/18 and has never been finally resolved),
- 5) general boycott of elections of judge-members to the National Council of the Judiciary by the judicial milieu,
- 6) no genuine verification of candidates for judge-members of the National Council of the Judiciary,
- 7) violation of legally binding rulings suspending the execution of nomination resolutions,
- 8) thwarting judicial control of the nomination process,
- 9) actions taken by public authorities to legalize the status of defectively appointed judges.

The aforementioned defects undermine the nomination procedure for judicial positions in the Supreme Court (and common courts), abrogate the results of the nominations and **deprive the persons thus appointed to judicial positions of the legitimacy to settle legal disputes. Judges and judicial bodies appointed in the manner described cannot be regarded as independent and objective.** Despite the irregularities indicated by the Supreme Court, the Commissioner and European institutions, the legislative and

⁶ Judgement of the CJEU of 19 November 2019, A.K. and others (independence of the Disciplinary Chamber of the Supreme Court), C-585/18, C-624/18 and C-625/18, EU:C:2019:982, points 120, 123, 134.

executive branches of the Polish government refuse to withdraw from the actions they have taken, thereby increasing the influence of political factors on the judiciary.

8. The aforementioned judgments of domestic courts and the CJEU in the case brought by A.K. and others have been challenged by government officials. Two petitions have been submitted to the Constitutional Tribunal: one by the Marshal of the Sejm seeking to settle competence disputes between the Supreme Court and the Sejm, and between the Supreme Court and the President of Poland (this petition aimed at preventing the Supreme Court from performing its constitutional and statutory role as well as preventing implementation of the judgment of the CJEU)⁷, and one by the Prime Minister to review the constitutionality of the Resolution of the combined Civil, Criminal, labour and Social Security Chambers of the Supreme Court of 23 January 2020⁸. The judgments handed down in both cases invalidated the interpretation made by the CJEU and the Supreme Court in the rulings issued by these bodies. Moreover, representatives of the judicial branch about whose appointments there are serious doubts have taken steps aiming to legitimize their status as judges and to challenge CJEU judgments⁹. The independence of the courts was also negatively affected by the adoption and entry into force of the Act of December 20, 2019¹⁰, which radically tightened the disciplinary liability of judges and prohibited verification of the independence of courts and impartiality of judges. The Disciplinary Prosecutor of Common Court Judges and his two deputies appointed by the Minister of Justice increased the number and scale of disciplinary proceedings initiated against judges; they also applied administrative measures and threatened criminal proceedings against judges.
9. Despite the decision of the CJEU calling for suspension of provisions regulating the Disciplinary Chamber of the Supreme Court in disciplinary cases concerning judges¹¹, the Chamber was ordered to investigate such cases and authorized to lift judicial immunity. The Commissioner called upon¹² the Prime Minister and the First President of the Supreme Court to take all steps necessary to ensure that the CJEU decision is duly executed. The First President did not concur with the Commissioner's arguments.

⁷ File ref. Kpt 1/20, <https://ipo.trybunal.gov.pl/ipo/Sprawa?cid=1&dokument=20179&sprawa=22473>.

⁸ File ref. U 2/20, OTK ZU A/2020, item. 61.

<https://ipo.trybunal.gov.pl/ipo/Sprawa?cid=2&dokument=20180&sprawa=22632>.

⁹ Proceedings before the Court of Justice of the European Union in case C-132/20 Getin Noble Bank; case before the Constitutional Tribunal on the motion of the 1st President of the Supreme Court, File ref. K 24/20.

¹⁰ Journal of Laws, 2020, item. 190.

¹¹ Order of the CJEU (Grand Chamber) of 8 April 2020. European Commission v Republic of Poland. Case C-791/19 R., EU:C:2020:277.

¹² VII.510.80.2020 submitted June 4, 2020.

16 (b) The Committee recommends that the State party take all necessary measures to firmly combat racist hate speech and incitement to violence, including on the Internet, and publicly condemn and distance itself from racist hate speech by public figures, including politicians and media officials.

10. The Commissioner continues to see a need to create effective tools to reduce hate speech (i.e. statements appearing in the public space promoting racist ideologies, fascism or other totalitarian ideologies and inciting hatred or insulting individuals or groups of people based on nationality, ethnicity, religion or non-denominational status), including on the Internet. Since the Committee's last assessment, no new measures have been taken to improve the effectiveness of the response to these negative phenomena.
11. On 30 June 2020, the Commissioner sent a letter to the Prime Minister in which the Commissioner once again called attention to his 20 recommendations for the effective prevention of hate crime¹³, pointing out how little has changed in the law and practice of prosecuting the above-mentioned offenses from the time these recommendations were first formulated by the Commissioner in 2018. The Commissioner called yet again for urgent measures to be taken in this regard and emphasized that the Inter-ministerial panel for counteracting the promotion of fascism and other totalitarian regimes as well as hatred based on national, ethnic, racial or religious differences or on the grounds of non-denominationality has produced disappointing results so far. The Commissioner also repeated his request for a comprehensive analysis of his postulates and urged that they be treated as a starting point for the government's engagement in the development of a comprehensive strategy for counteracting hate crime.
12. The Commissioner continues to maintain that key proposed legal changes should include a new provision in the penal code that punishes membership in organizations promoting totalitarian regimes or inciting racial hatred, the existence of which is prohibited under Article 13 of the Polish Constitution¹⁴.
13. In the area of combatting online hate speech¹⁵, the Commissioner believes it is advisable to develop codes of good practice by internet service providers and NGOs, or to set up independent contact points similar to the contact point for Facebook established in November 2018 under an agreement with the Ministry of Digital Affairs. The new contact points, however, should have expanded authority to enforce the obligations of Internet service providers to counteract hate speech. The Commissioner also reiterated his unfulfilled yet still valid postulates urging the National Broadcasting Council to issue recommendations on hate speech, and calling for a comprehensive, external analysis of the response by the Parliamentary Ethics Committee to reported cases of

¹³ See the 2019 Commissioner's report for CERD, point 21.

¹⁴ See the 2019 Commissioner's report for CERD, points 26-28.

¹⁵ See the 2019 Commissioner's report for CERD, point 22.

hate speech. Furthermore, the Commissioner proposed formulating a statutory definition of hate speech.

14. In a letter dated 3 July 2020, the Prime Minister obliged the Government Plenipotentiary for Equal Treatment to issue a response to the Commissioner's aforementioned postulates. **The Commissioner has yet to receive this response, nor have any of his letters or comments resulted in any remedial action on the part of the government.**
15. In his statement issued 20 March 2021, the Commissioner referred to the above-mentioned problem a third time and called upon the Prime Minister to provide a substantive response while pointing out that on **18 February 2021, the European Commission, acting pursuant to Article 258 of the Treaty on the Functioning of the European Union, issued a decision¹⁶ finding that Poland had failed to comply with EU law by incorrectly transposing Council Framework Decision 2008/913 / JHA of 28 November 2008 on combating certain forms and manifestations of racism and xenophobia by means of criminal law.** In the Commission's opinion, the provisions concerning incitement to hatred by instigators of racist and xenophobic violence have not been correctly transposed into Polish criminal law, which has improperly narrowed the scope in which incitement to hatred is sanctioned. Furthermore, according to the Commission, Poland has incorrectly transposed the provisions on the criminalization of specific forms of incitement to hatred, ignoring the gross trivialisation of international crimes and the Holocaust while limiting the criminalization of the denial or approval of these crimes solely to cases where these crimes were committed against Polish citizens.
16. In 2019 and 2020, the Commissioner continued correspondence with the Prosecutor General regarding 31 cases conducted by law enforcement from 2015 to 2019 which were monitored at various stages by the Commissioner and in which actions taken by prosecutors or decisions issued thereby raised doubts as to their compliance with standards formulated, *inter alia*, by the European Court of Human Rights, including with the principles of objectivity and special diligence in establishing hate-based motives for crimes¹⁷. In correspondence conducted with the Prosecutor General, the Commissioner called attention to doubts concerning the effective implementation by law enforcement agencies of the Prosecutor General's Guidelines of February 26, 2014 on conducting hate-crime proceedings¹⁸.
17. The Prosecutor General, in a letter dated 17 August 2020, replied to the Commissioner's inquiry into the actions of the Prosecutor's Office initiated by the Commissioner's

¹⁶ INFR (2020)2322, Incorrect transposition of the Council framework decision 2008/913/jha by Poland.

¹⁷ See the 2019 Commissioner's report for CERD, point 37.

¹⁸ Guidelines of the Prosecutor General dated February 26, 2014 on conducting proceedings for hate crimes – see: Information received from Poland on follow-up to the concluding observations on its twenty-second to twenty-fourth periodic reports, point 37.

request of January 23, 2019 to examine the procedural correctness of the 31 indicated cases and the validity of the substantive decisions issued therein. However, the Prosecutor General unreasonably refused to provide the Commissioner with the requested information. Moreover, the Prosecutor, contrary to the statutory powers of the Commissioner and accepted jurisprudence, questioned the Commissioner's authority to demand that the prosecutor's office initiate preparatory proceedings in cases of offenses prosecuted *ex officio*¹⁹. The Prosecutor even refused to provide the Commissioner with statistical information on crimes perpetrated out of racist, anti-Semitic or xenophobic motives (the latest information published on this subject concerns 2017).

18. The Commissioner argued against the Prosecutor General's position. In a statement addressed to the Prosecutor General on 16 September 2020, the Commissioner presented his interpretation of the Act on the Commissioner for Human Rights, supported by examples from case law and recommendations of the Committee for the Elimination of Racial Discrimination²⁰, and again called upon the Prosecutor to provide explanations to the extent requested by the Commissioner. The Commissioner has not yet received an answer.
19. The National Prosecutor raised a similar argument in his correspondence with the Commissioner. On 12 September 2019, the Commissioner initiated an investigation – on the basis of an article in the press – into the anti-Semitic statements made by a participant in a publicly displayed internet forum. During an investigation of the event, which occurred in 2015, the District Prosecutor's Office for Wrocław - Old Town established that the forum user was a judge of the District Court in Ślubice at the time who since then was appointed President of the District Court in Gorzów Wielkopolski and a member of the National Council of the Judiciary.
20. After taking the case, the Commissioner asked the National Prosecutor's Office to inform him about the current state of the proceedings. The National Prosecutor only informed the Commissioner that the investigation was ongoing, without providing the detailed information requested. In subsequent letters, the Commissioner reiterated his requests for information from the National Prosecutor about the pending proceedings. The Commissioner expressed concern that, despite the authority conferred to his office by the Act on the Commissioner for Human Rights²¹, the National Prosecutor consistently refused to provide requested information crucial to assessing whether the law was broken by authorities obliged to prosecute hate speech cases.
21. In a letter dated 3 November 2020, the National Prosecutor again refused to give the Commissioner access to information about the above-mentioned case, arguing that providing the requested information at the current time would be detrimental to the

¹⁹ See the Commissioner's report for CERD, 2019, points 9-10.

²⁰ CERD Final Comments on Joint XXII-XXIV Periodic Report submitted by Poland, point 10 c.

²¹ Resulting from Article 13(1)(3) of the Act on the Commissioner for Human Rights.

important interest of the investigation conducted by the prosecuting authorities. The Commissioner found this line of argument to be disturbing, and replied that any insinuation that the Commissioner's use of his statutory powers could violate the good of the investigation undermines the standing of the constitutional body that is the Commissioner for Human Rights, the democratic legal order and trust in the Prosecutor's Office, detracting from its perceived reliability and objectivity. That the proceedings in this case have not been conducted in a reliable manner is a conclusion that could be drawn from the fact that, despite the lapse of five years since their initiation, the prosecutor's office has displayed difficulty explaining all the circumstances of the case and making decisions as required by law.

22. The foregoing correspondence with the National and General Prosecutor's Office indicates, in the Commissioner's opinion, that the Prosecutor's Office has deliberately ignored the authority of the constitutional body that is the Commissioner for Human Rights. Moreover, by refusing to provide reliable and comprehensive answers to the Commissioner's inquiries and questioning his statutory authority, the prosecutor has committed intentional obstruction of this institution, which has undoubtedly had a deleterious effect on respect for human rights and freedoms, including the prevention of hate crime.
23. Proceedings are still pending before the District Prosecutor's Office in Warsaw concerning incitement to hatred on the grounds of race, nationality, ethnic origin or religion in an anti-Muslim and anti-immigrant election commercial aired by the Law and Justice Electoral Committee. The spot was part of the campaign preceding the 2018 local elections²². On 27 August 2019, the District Prosecutor discontinued proceedings in the aforementioned case on the grounds that the act described in the Commissioner's complaint did not bear the characteristics of the prohibited act referred to in Article 256(1) of the Criminal Code. The prosecutor found that the spot presented its authors' own opinions, which fell entirely within the scope of freedom of speech as guaranteed by the Polish Constitution. The Commissioner filed an appeal against the Prosecutor's decision, arguing that the purpose of the commercial, as in all materials produced for the sake of political campaigns, was to evoke certain emotions in viewers, in this case negative emotions, which were intended to induce viewers to engage in a specific behaviour: voting for the given party. In the Commissioner's opinion, the commercial's content itself constituted the crime of public incitement to hatred pursuant to Article 256(1) of the Criminal Code, because the broadcast material was meant to evoke strong feelings of antipathy, anger, non-acceptance or even hostility towards individuals or entire social or religious groups.

²² The case was described in detail in the 2019 Commissioner's report for CERD, point 42.

24. On 10 March 2020, the District Court for Warsaw-Mokotów, after reviewing the appeal lodged by the Commissioner, quashed the prosecutor's decision to discontinue proceedings, thereby resulting in their continuance. In its justification of the decision, the court pointed out that “the production of film materials and their public presentation, containing the content indicated in the commercial – regardless of whether they constitute an element of an election campaign or not – could cause average viewers to have perceptions resulting in a sense of threat and fear for their own safety. Moreover, when familiarising oneself with the content of the election spot in question, an attempt may be made to induce a misunderstanding of terms such as: “refugee”, “migrant”, “Muslim”. The viewer of such a spot – as well as a spot similar in its purport – may identify the aforementioned notions with a threat to their safety”. After reconsidering the case, the District Prosecutor discontinued the proceedings yet again, stating that no crime had been committed. The Commissioner did not agree with the Prosecutor's decision and lodged a complaint against it to the Regional Prosecutor. On 20 January 2021, the Regional Prosecutor allowed the Commissioner's complaint and ordered the District Prosecutor to resume the investigation.

16 (c) The Committee recommends that the State party intensify its public campaigns to combat hate speech, incitement to hatred and hate crimes, to address prejudices and negative sentiments towards national and ethnic minorities, migrants, refugees and asylum seekers, and to promote tolerance and understanding towards these groups.

25. So far, activities aimed at increasing public awareness of the need to combat discrimination have been undertaken only by non-governmental organizations or some local government bodies. Information held by the Commissioner indicates that the public authorities have not conducted any campaigns to combat hate speech, incitement to hatred and hate crimes, or campaigns to solve problems related to prejudices and negative attitudes towards national and ethnic minorities, migrants, refugees or persons applying for international asylum.

26. The draft National Action Plan for Equal Treatment 2021-2030, which was presented in November 2020 for public consultation, includes the priority direction “Building awareness”. This framework provides for the implementation of social campaigns aimed at counteracting discrimination and encouraging tolerance, as well as preventing intolerant attitudes and hate crimes. The only detailed activities proposed in the plan – “workshops for teachers and young people with representatives of the Police” and “pilot program for students in the latter grades of primary school and secondary schools from Warsaw with the participation of national and ethnic minorities active in Warsaw”²³ –

²³ See p. 78 of the draft Plan at: <https://www.gov.pl/web/rodzina/projekt-uchwaly-rady-ministrow-w-sprawie-ustanowienia-programu-wieloletniego--krajowy-program-dzialan-na-rzecz-rownego-traktowania-na-lata-2021-2030>.

cannot be considered sufficient to meet the current challenges, nor do they constitute implementation of the goal recommended by the Committee. Moreover, the above-mentioned plan has yet to be adopted by the government.

16 (d) The Committee recommends that the State party send strong messages to journalists and broadcasters that they have a responsibility to avoid the use of hate speech and stereotypes in describing minority communities, take action against websites promoting racial hatred and, particularly in the context of election campaigns, closely scrutinize broadcasters with respect to content that incites hatred or strengthens xenophobic attitudes.

27. The Commissioner has observed with concern the progressive radicalization of the language of public debate, including the language used by the media. In 2020, the Office of the Commissioner for Human Rights received a complaint from the Roma Association in Poland regarding the recurrent media practice of stating the nationality or ethnic origin of crime perpetrators when the perpetrators are of Roma origin. In connection with this complaint, the Commissioner sent statements to the Media Ethics Council²⁴ pointing out that mentioning a perpetrator's nationality or ethnicity in publications or broadcasts describing events whose circumstances have no relation to the nationality or ethnic origin of those participating in them only contributes to the stigmatization of members of minority communities, in this case the Roma, and perpetuates the unfavourable image of the given minority that already functions in the public's consciousness. Moreover, negative images of minorities very often underlie the xenophobic attitudes observed among part of the Polish public, and in extreme cases, acts of physical aggression motivated by hatred.

28. On 20 November 2020, the Media Ethics Council issued a declaration stating that journalists should not indicate the nationality or ethnic origin of perpetrators. The Council also shared the Commissioner's concern about publications identifying the Roma as perpetrators of crimes or offenses and emphasized that publishing this type of information violates the principles of ethical journalism.

29. In 2019 and 2020, the Office of the Commissioner for Human Rights received complaints concerning incitement to hatred on public television, including statements of an anti-Semitic nature. The Commissioner intervened in these cases, *inter alia*, by sending a letter to the National Broadcasting Council. In July 2020, the Commissioner asked the Chairman of the National Broadcasting Council for information on all the steps it has taken and plans to take, including official positions and recommendations, aimed at systematically combatting the phenomenon of hate speech and anti-Semitism in the media. At the same time, the Commissioner called the NBC Chairman's attention

²⁴ The Media Ethics Council is an organization established March 29, 1995 on the initiative of the Association of Polish Journalists and based on the Media Ethics Charter.

to the statements of an editor who co-hosts the program *W tyle wizji* on the public television station TVP Info who, during a broadcast, blamed Jews for the extermination of their own nation during World War II. In his reply dated September 10, 2020, the NBC Chairman informed that an inquiry had been conducted into the content indicated by the Commissioner which found no violation of the Broadcasting Act. This position was challenged by the Commissioner in a second letter to the NBC President noting that the content of such statements may violate the above-mentioned Act, particularly Article 18(1), which prohibits the propagation of illegal activities in broadcasts and other media, in particular content inciting hatred or discrimination in respect to, *inter alia*, nationality. Despite the Commissioner's request to re-examine the content of the statement, the National Broadcasting Council maintained its position on the matter. The NBC chairman also informed the Commissioner that work was under way on the preparation of a document dedicated to counteracting fake news, disinformation and hate speech in the media. In December 2020, the National Broadcasting Council published the report "Fake news – online disinformation. Attempts to counteract these phenomena from the perspective of international institutions and selected EU countries, including Poland"²⁵. The report, however, does not address the problem of counteracting prejudices and hate speech in the media.

18 (a) The Committee urges the State party to ensure effective enforcement of the laws declaring illegal parties or organizations 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 local chapter of Blood and Honour.

30. Information presented by the Prosecutor General²⁶ indicates that from 2017 to 2020 four proceedings were conducted to determine whether there were grounds to petition the court to ban organizations for promoting racial discrimination.

31. As a result of these proceedings, the Pride and Modernity Association was dissolved on 7 August 2019 by a decision issued by the District Court in Gliwice. It was the only proceeding that resulted in an organization being delegalized. The prosecutor also conducted an inquiry into whether grounds existed to ban the *March of Independence Association* and *All-Polish Youth*. The proceedings ultimately found that there were no factual or legal grounds to petition the court to delegalize these organizations.

32. The Commissioner continues to call attention to the drawn-out proceedings concerning the banning of the National-Radical Camp (ONR). Since at least December 2017, the District Prosecutor's Office for Kraków-Krowodrza has been conducting an inquiry into

²⁵ The report can be accessed at: <https://www.gov.pl/web/krrit/fake-news---dezinformacja-online---nowa-publikacja-krrit>

²⁶ Information provided by the National Prosecutor's Office November 30, 2020, prepared at the request of the National Minorities Committee of the Sejm.

whether there are grounds to petition the court to ban the ONR. The prosecutor has repeatedly asked the Commissioner to send information about developments in criminal proceedings conducted on the basis of the Commissioner's notification concerning fascist content or incitement to hatred on the basis of race or nationality by the milieu sympathizing with the ONR. In each instance the Commissioner provided the relevant information (e.g. on the proceedings in the case of the Hajnówka March of the Cursed Soldiers). According to information from the General Prosecutor's Office, the proceedings are currently being conducted by the Regional Prosecutor's Office in Kraków.

33. In this context, it should be noted that the problem outlined above was also raised in European Commission Reports against Racism and Intolerance (ECRI) concerning Poland²⁷. In its recommendations, ECRI calls for government authorities to take an active stance in collecting evidence that would mandate the disbanding of groups propagating racism. The Commission also points out that the evidence need not be sufficient to initiate criminal prosecution against members of these groups.

²⁷ ECRI report on Poland (fourth monitoring cycle), CRI(2010)18, point 26., ECRI report on Poland (fifth monitoring cycle), CRI(2015)20, point 39; see: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/poland>