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HELSINKI FOUNDATION for HUMAN RIGHTS**

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**REPLIES TO “THE LIST OF ISSUES” PRESENTED BY THE RAPPORTEUR  
CONCERNING THE REPORTS (SEVENTEENTH, EIGHTEENTH AND  
NINETEENTH) SUBMITTED BY POLAND UNDER ARTICLE 9 OF THE  
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF  
RACIAL DISCRIMINATION (CERD/C/POL/19)<sup>1</sup>.**

**Warsaw, 30 July 2009**

**Ad. 1 (ART. 2)**

*Question 1 by the Rapporteur:*

*“With regard to the passing of the Act on national minorities and ethnic and regional languages in January 2005 and the establishment of the Joint Commission of Government and National and Ethnic Minorities, please provide an overall assessment of the impact of these developments on the protection of minority rights in practice.”*

[1] In Poland, the protection of minority rights in practice raises some concerns. For example, recently the Polish Public Television (Telewizja Polska S.A.) made a decision to stop broadcasting the only TV program in the Ukrainian language, "Telenowyny," which was intended for the Ukrainian minority living dispersed throughout the country. On 28 July 2009, the Helsinki Foundation for Human Rights made a public statement regarding this issue. We claim that this decision made by the Polish Public Television violates several national and

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<sup>1</sup> Presented with the support of the Human Rights House Foundation (HRHF),  
[www.humanrightshouse.org](http://www.humanrightshouse.org).

international standards. In particular, we referred to Article 11, para. 1 section (c) (ii) of the European Charter of Regional and Minority Languages.<sup>2</sup>

#### **Ad. 5 (ART. 4)**

*Question 5 by the Rapporteur:*

*In its previous concluding observations, CERD criticized the dismissal of some cases of incitement to racial hatred with reference to their low degree of damage to society. Similarly, the European Commission against Racism and Intolerance (ECRI), in its third report on Poland released in June 2005, expressed concern that the authorities rarely investigated and prosecuted cases of racial hatred and allowed anti-Semitic material to circulate freely on the market. In addition to the examples of proceedings in cases related to racist and xenophobic crimes cited in paragraph 132 of the State report, please provide information on the authorities' general approach to publications and works with a racial bias, including graffiti paintings, on action taken regarding Polish anti-Semitic portals and anti-Semitic contents available on the internet, and on measures taken to counteract the dissemination of ideas based on racial superiority or hatred to young people through music. Please also provide updated information on any significant court proceedings after 2005.*

[2] Racist and anti-Semitic publications and broadcasting are a problem that is still unresolved in Poland. An example would be the inability of the Polish authorities to deal with a neo-fascist website: [www.redwatch.info](http://www.redwatch.info). It is a website that has been operating since January 2006 and has presented materials of a fascist and racist nature. In particular, the website lists a number of people who, in the opinion of the authors of the website, represent a threat to Polish society. Information on the website includes photos, addresses and even mobile phone numbers of these people. The descriptions of these people also contain information on political beliefs, social activities, and often use vulgar language. Despite the arrest of three people connected with Red Watch, this website continues to operate. The Polish government tried to intervene in this respect with the US authorities (where the servers are located). However, assistance has been refused. Consequently, the website is still operating and there is no real and effective measure which can change this situation. There are new servers where the website also operates. Since the establishment of the website, a few proceedings have been undertaken with the aim of identifying the website managers but they did not end in formulating the bill of indictment. Recently, the Helsinki Foundation for Human Rights has expressed its concern with the way the preliminary proceedings are conducted by the Municipal Police Unit against the authors of the webpage (sygn. D-I-717/09, RSD-64/09). Policemen investigating the case are identifying and interrogating all 515 persons whose

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<sup>2</sup> <http://www.hfhrpol.waw.pl/pliki/Telenowyny.pdf>

names were put on the webpage because they signed a protest against a ban on organizing the Equality Parade in 2005 issued by the Mayor of Warsaw<sup>3</sup>. In our opinion, only key witnesses should be heard; otherwise, these proceedings will not end successfully.

[3] In this context, it should also be mentioned that the head of Polish public television from December 2008 is a young man who used to be the publisher of a racist newsletter called "Front" (its editorial line was the following: "We don't tolerate cowards, snitches and Jews."). His election as vice-president of the public television in 2006 was supported by the League of the Polish Families and the Law and Justice Party. From the beginning of his term as president of the public television, Piotr Farfał imposed his will steadily, purging the network of journalists and officials opposed to him and his nationalist line. He has also given prominence to eurosceptic views challenging the European Union, forcing a break in programming to broadcast an interview with Declan Ganley. Recently, he took one of Poland's largest dailies (Gazeta Wyborcza) to court for calling him a "former neo-nazi." In February, the court ruled against him, with the judge saying that Farfal was a public figure, "who should not be one because of the views he once expressed." Recently, the Franco-German cultural television channel broke off cooperation with Polish state television over Farfal's presence, saying that "he does not share our values." Open Republic, an organization aimed at stamping out xenophobia and anti-Semitism, issued a letter calling it "a shameful and highly damaging thing that a former neofascist is at the head of [public television]."

[4] In cases of anti-Semitic or racist publications or broadcasting, there are problems with initiating civil law proceedings for violation of personal rights when a person is addressing Jews or the Jewish nation with racial slurs. This is because an individual harm must be proved and it is not sufficient to show that a given person is part of the insulted group. Even though criminal proceedings are available in the latter case, penalties are often not severe enough to deter the use of hate speech.

[5] One of the country's most dynamic companies is allegro.pl, an Internet auction house (described by the company itself as 'a copy of eBay'), and is allowing auction sites that sell Nazi memorabilia. Polish NGOs and dailies intervened on this issue. A lawyer representing allegro.pl told the media: "According to current legislation, only people can incite to racial

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<sup>3</sup> [http://www.hfhrpol.waw.pl/pliki/list\\_8\\_05\\_2009.pdf](http://www.hfhrpol.waw.pl/pliki/list_8_05_2009.pdf)

hatred (not things)”<sup>4</sup>. There was no reaction on this issue by the Polish prosecution.

[6] Manifestations of racism and anti-Semitism at football stadiums are common in Poland. For example, in October 2008, a group of Polish fans shouting “Sieg Heil” attacked and beat up a rabbi on their way to the Slovakia-Poland game in Bratislava. During the actual match, several of the Polish supporters chanted racist slogans and attacked Slovak fans. The Never Again Association conducts regular monitoring of such incidents in Poland and each year they document up to a hundred racist manifestations<sup>5</sup>. The Helsinki Foundation for Human Rights has intervened on the issue of racist incidents at football stadiums with the Polish Prime Minister in May 2008. We underlined the growing number of such incidents and ineffectiveness of measures undertaken by the Polish government, the Polish Football Association (PZPN) and the UEFA to counteract racism in football stadiums<sup>6</sup>.

[7] Anti-racist laws are not always duly applied in cases of racist incidents at football stadiums. Recently, the Prosecutor’s Office in Kraków-Krowodrzy decided to discontinue a case filed by the local Jewish community. During the Kraków derby (Cracovia Kraków v. Wisła Kraków), Cracovia fans made monkey gestures at Wisła’s Brazilian-born footballer. Wisła fans, on the other hand, shouted “to the gas chamber” at Cracovia’s footballer. After the game, Wisła fans shouted “[We are] always better than you fucking Jews.” The prosecutor claimed that these racist chants were not criminal in character because there are historical reasons for the chants by the Wisła supporters. She said that antagonisms between the two Kraków teams date back to 1906 because Wisła had always been traditionally “Catholic” and Cracovia traditionally “Jewish.” As to the monkey gestures made by Cracovia fans, she said that it is not possible to prove that the reasons for such behavior had to do with the player’s skin color.

[8] There are reported cases of black students studying in Warsaw being slandered and physically attacked in the city. After a recent racist attack on a black student of Collegium Civitas (CC), the Rector and students of CC prepared a petition<sup>7</sup> addressed to the President of

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<sup>4</sup> „Hitler schodzi na Allegro”, Wojciech Karpieszuk, Gazeta Wyborcza daily;

[http://wyborcza.pl/3292000,75478,6811206.html?back=/gazetawyborcza/1,75478,6811396,hitler\\_schodzi\\_na\\_allegro.html](http://wyborcza.pl/3292000,75478,6811206.html?back=/gazetawyborcza/1,75478,6811396,hitler_schodzi_na_allegro.html)

<sup>5</sup> [http://www.nigdywiecej.org/index.php?option=com\\_content&task=view&id=387&Itemid=76](http://www.nigdywiecej.org/index.php?option=com_content&task=view&id=387&Itemid=76)

<sup>6</sup> <http://www.hfhrpol.waw.pl/Noswiadczenie-104.html>

<sup>7</sup> <http://www.petycje.pl/petycjePodglad.php?petycjeid=4073>

Warsaw and the Municipal Chief of the Police. In the petition (which was signed by almost 2,000 people), the authorities were asked to activate a 24-hour Emergency Phone Line in the Municipal Police Unit that would be operated by an English-speaking policeman in order to improve the monitoring system close to places where foreign students live (mainly close to student dormitories) and to organize campaigns promoting open and hospitable attitudes towards foreigners living in Warsaw. The Association of Rectors of Warsaw Universities supported this initiative<sup>8</sup>.

#### **Ad. 10 (ART. 5)**

*Question 10 by the Rapporteur:*

*Please provide updated information on efforts made to ensure the full implementation of the principle of non-discrimination in employment (including with regard to membership and involvement in organizations of workers or employers), education and social protection (including social and health care) and access to goods and services available to the public (including housing) in practice, including information on recent effort to ensure full compliance with the letter and spirit of the EU Racial Equality Directive*

[9] In Poland, there is lack of comprehensive anti-discrimination laws that protect different fields of social life from discrimination due to racial or ethnic origin. In fact, only the field of labour law is adequately regulated from this type of discrimination. There is also no equality body that prevents the development of policies towards counteracting discrimination. Accordingly, the Racial Equality Directive 2000/43/EC (hereinafter “RED”) has not been implemented in Poland in this respect.

[10] The Prime Minister Donald Tusk introduced on 8 March 2008 the appointment of a new plenipotentiary for equal treatment [*Pełnomocnik Rządu ds. Równego Traktowania*] as a member of the cabinet in the rank of the secretary of state in the Chancellery of the Prime Minister (*sekretarz stanu w Kancelarii Prezesa Rady Ministrów*). Relevant law was enacted by the Council of Ministers – the Ordinance of 22 April 2008 on Government Plenipotentiary for Equal Treatment, which was entered into force on 30 April 2008<sup>9</sup>. The office of the Plenipotentiary (within the office of the Prime Minister) was established in September 2008 and currently employs 5 persons. The task of the Plenipotentiary is to execute the governmental policy with regard to equal treatment including counteracting discrimination

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<sup>8</sup> [http://www.civitas.edu.pl/aktualnosc\\_pl&cmn\\_id=1671?ph\\_aktualnosci\\_start=show](http://www.civitas.edu.pl/aktualnosc_pl&cmn_id=1671?ph_aktualnosci_start=show)

<sup>9</sup> Rozporządzenie Rady Ministrów z dnia 22 kwietnia 2008 r. w sprawie Pełnomocnika Rządu do spraw Równego Traktowania [*Ordinance of the Council of Ministers of 22 April 2008 on the Government Plenipotentiary for Equal Treatment*], Dziennik Ustaw [*Journal of Laws*] No. 75, item 450.

based on gender, race, ethnic origin, nationality, religious or beliefs, political convictions, age, sexual orientation, civil (marital) and family status. Competencies of this new office include: analysis and research, monitoring, collaboration with other organs, local self-governmental units and NGOs, creation of draft laws, pronouncement of opinions about laws drafted by other organs, and taking actions aiming at elimination or limitation of results caused by violation of the rule of equal treatment. The Plenipotentiary may create special research teams and call for particular research or expertise and may provide a report as a result of this research. He or she may also issue recommendations. However, the Plenipotentiary does not have the capacity to take complaints and assist individual victims.

[11] Since the office of the Plenipotentiary is relatively new, it is too early to evaluate its operation. However, plenty of critique has already been formulated, including a collective complaint of 36 NGOs to the European Commission<sup>10</sup>. The main problems of the office are as follows:

- lack of clear distinction of the competencies in between the office and other institutions dealing with discrimination issues – such as the Department for Women, Family and Counteracting Discrimination within the Ministry of Labour and Social Policy<sup>11</sup>;
- lack of independence, since the office is placed within the government, precisely in the office of the Prime Minister;
- lack of separate budget;
- lack of adequate staff;
- lack of information policy.

[12] The situation would be significantly improved if the law on equal treatment was adopted. This law has been in the preparation process for the last couple of years. Continuing the previous preparation, the Ministry of Labour and Social Policy introduced on 2 April 2007 the

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<sup>10</sup> Letter of Polish 36 NGOs of 9 February 2009 to the European Commission (DG Employment, Social Affairs and Equal Opportunities) on non-enforcement of certain EU equality directives, including RED. The letter is available at the website <http://www.feminoteka.pl/news.php?readmore=4464>.

<sup>11</sup> Good example of this lack of clear division of competencies, or even some kind of conflict, is the process of the preparation of the draft law on equal treatment. The main role in this respect is played officially by the Ministry of Labour even the Plenipotentiary seems to be more adequate institution to do it (and takes part in the process by commenting on the draft law and also collecting opinions of the civil society).

draft Act on Equal Treatment and sent it for social consultations. Since that time, there have already been several versions of the draft law in the last two years and yet the outcome is unsure.

[13] Furthermore, successive versions of draft law differ significantly. The scope of the law was initially very wide and consecutive versions limited it, narrowing it to almost verbatim implementation of directives (filling the gaps of previous improper implementation of the RED and Directive 2000/78/EC as well as correcting some mistakes of previous implementation). Finally, the latest but still unofficial draft law (January 2009) widens the scope again like the initial version.

The initial draft law (April 2007) was much broader and went beyond the scope of the RED and Directive 2000/78/EC, anticipating the proposal of the new horizontal anti-discrimination directive discussed within EC. It prohibited discrimination regarding access to social security, health care, education, access to goods and services publicly accessible (including housing) because of race and ethnic origin, nationality, gender, religion or beliefs, political beliefs, disability, age, sexual orientation, property, marital and family status. The draft law of 21 January 2008 limited the scope of law. It kept the protection of all groups in terms of social security, health care and education but limited the protection in access to goods and services to gender, race and ethnic origin.

The draft of 24 April 2008 narrowed the scope even more in order to simply implement the directives and not venturing beyond them (to provide protection from discrimination in all fields beyond labour matters only because of gender, race and ethnic origin).

The two latest drafts (October 2008 and January 2009) changed the name of the act: instead of being called the 'law on equal treatment,' it is now called the 'law on implementation of the European Union regulations in relation to equal treatment'. However, the scope of the last version is again much broader and covers the prohibition of discrimination based on all possible grounds of discrimination in access to social security, health care, education, access to goods and services publicly accessible (including housing).

[14] Additionally, the concept of the equality body changes in the consecutive versions of the draft law. The latest version envisages that the assistance to victims would be provided by the Ombudsperson (relevant amendments of the law on Ombudsperson are being proposed) and

the independent surveys, reports and recommendations (as well as legal assistance to subjects other than natural persons) would be the competence of the new Plenipotentiary for Equal Treatment in the rank of the secretary or under-secretary of state in the ministry responsible for equal treatment (the draft law does not determine which ministry is the one). The Plenipotentiary would be appointed and removed by the Prime Minister on the motion of the Minister responsible. The law does not cover the budgetary and staffing issues. Placing the office of the Plenipotentiary within the structure of the government raises doubts in terms of independence in its actions. However, it must be noted that this is just one more draft version of the law (still not official) and it is impossible to predict what will be the final outcome.

[15] On 4 May 2009, the Committee of the Council of Ministers has asked for additional discussions between various ministers regarding the draft law. It also asked for an opinion of the Legislative Council (*Rada Legislacyjna*) in regard to the compliance of the draft law with the Constitution.<sup>12</sup> It appears that these additional consultations will prolong the process of the finalization of works on the draft anti-discrimination law.

[16] Furthermore, in the beginning of July 2009, Ms. Agnieszka Chłoń-Domińczak, Vice-Minister of Labour, was dismissed. It was clear that the reason for her dismissal was purely political, as she was highly regarded for her active work and competency. Nevertheless, the Minister of Labour Jolanta Fedak said the reason for her dismissal was her slow work on the anti-discrimination law.<sup>13</sup> It seems, however, that this argument was used just for political purpose and had no relevance to actual reasons for dismissal. Non-adoption of anti-discrimination law is not an effect of personal failure on anyone's part, but rather the lack of prioritization of this issue by the whole Government.

[17] Quite to the surprise of HFHR and other human rights NGOs in the interview on the Polish Radio "Trójka" on August 3, 2009 the Government Plenipotentiary for Equal Treatment Elżbieta Radziszewska said that there will be no anti-discrimination law and that the anti-discrimination draft law is nonexistent. Explaining why finally there will be no law which has been in preparation for four years now, she said it is impossible to continue the work on the draft law which is "firstly, unconstitutional and, secondly, does not fulfil EU

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<sup>12</sup> See statement of the Committee of the Council of Ministers of 4 May 2009, available at [http://www.mps.gov.pl/bip/download/Stanowisko%20rowne%20traktowanieKRM\\_05-05-09.pdf](http://www.mps.gov.pl/bip/download/Stanowisko%20rowne%20traktowanieKRM_05-05-09.pdf)

<sup>13</sup> See statement by Jolanta Fedak, Minister of Labour, of 6 July 2009, available at [http://www.mpips.gov.pl/index.php?gid=339&news\\_id=1511](http://www.mpips.gov.pl/index.php?gid=339&news_id=1511).



directives". Minimizing problems with the transposition of EU equality directives she said that the only real problem Poland has with fulfilment of EU directives is the nomination of the equality body which, in her opinion, is the Polish Ombudsman. She said the law will be changed in order to fulfil EU equality directives but there will be no anti-discrimination statute<sup>14</sup>.

[18] In a recent letter by the European Commission to 36 protesting NGOs, the Commission confirmed non-implementation of EU equality directives, including RED, and declared the start of infringement procedure with respect to Poland. On 14 May 2009, the European Commission referred Poland to the European Court of Justice (ECJ) for non-transposition of EU rules in prohibiting gender discrimination in access to and supply of goods and services (Directive 2004/113/EC). The implementation of this Directive is provided in the same draft anti-discrimination law, which implements the RED and its provisions on access to supplies of goods and services. There is a chance that due to the pending case before the ECJ, the Government will accelerate its work on the anti-discrimination issue.

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<sup>14</sup> <http://www.polskieradio.pl/trojka/salon/artykul108181.html>