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RAXEN National Report

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Executive summary

Overall, Poland is an ethnically homogeneous country. According to the most recent national census held in 2002, Poland is populated by 38,230,000 people. Polish nationality is declared by 36,983,700 persons (i.e. 96.74 per cent of the population). There are 471,500 (i.e. 1.23 per cent of the population) members of national and ethnic minorities (i.e. Polish citizens with a non-Polish ethnic background). The number of foreigners (not Polish citizens), that are permanent residents of the Republic of Poland amounts approximately 40,200. It was not possible to establish a nationality with respect to 774,900 (2.03 per cent) people. Anthropologically and ethnically distinct persons are potentially most subject to racism and xenophobia.

The data gathered indicates open racism is not common in Poland. Although, instances of racist violence and crimes do occur, racist violence is not drastic and or commonplace. Just as in previous years, in 2004 there were reports of violence against the Roma, mainly in Poland's southern cities. This group is most affected by discrimination in other areas of life. Anti-Semitism is present mainly on a verbal level (hate speech, anti-Semitic graffiti, press articles). So far, the issue of islamophobia has not appeared as a visible problem that would touch individuals. Foreigners visiting Poland more often meet with dislike and xenophobia than racism. Xenophobia mainly affects persons of Asian and African origin as well as visitors from former Soviet Republics, often denigrated with the term "Ruski" (pejorative version of the word for "Russian").

It is very difficult to evaluate the state of discrimination as defined in Directives 2000/78/EC and 2000/43/EC. No complex systematic research has been conducted with respect to discrimination in education, employment and housing based on racial or ethnic prejudice. Available data are general outlines describing the situation of minorities and migrants, fragmentary statistics as well as information obtained from institutions and NGOs dealing with these groups. These entities do not conduct ongoing monitoring activity. They obtain information regarding particular projects. However, the information collected is not systematized, processed or publicly available. Consequently, data obtained from these sources are reports of individual events, general remarks and conclusions regarding the situation of minorities and their main problems.

The available information permits tracing a mere outline of the situation, indicating the most evident developments and tendencies. The Roma are the group in the most difficult situation. As a group, they are characterized by a low level of education, very high unemployment (nearly one hundred per cent) and poor living conditions (this particularly applies to the Roma residing in southern Poland). Recently, both the government and NGOs undertook a series of programs to benefit the Roma. They include tasks aimed at improving housing conditions and professional activation. The greatest efforts have been made in education, deeming that increasing Roma education levels will improve their opportunities on the labour market and accordingly raise their material status.

Currently, the problem of delineating employment discrimination against the Roma is hindered by their low educational level and lack of qualifications, which are always viable reasons for a refusal to employ. Situations where the Roma are explicitly refused employment due to ethnicity rarely occur. A fragmentary evaluation of education assistance programs for the Roma (evaluation of the whole is not possible since their implementation is ongoing) indicates the situation is improving. The employment of Roma assistants in schools has played an important role in this respect. It is also worth noting that even though employing Roma assistants is an educational activity, it also lowers unemployment in that group (though only minimally).

Other groups in a difficult position are refugees and particularly foreigners who applied for that status but were only granted a tolerated stay. Hence, they are not covered by the individual integration program (as part of which assistance includes help in finding employment), though their integration

needs are the same as that of refugees. People with tolerated stay, refugees and foreigners all have difficulties in finding housing. This is particularly severe for persons from the former Soviet Union. Employment discrimination is difficult to discern since many foreigners willingly work illegally. Moreover, refugees and persons granted tolerated stay generally do not seek employment in Poland and leave the country shortly after obtaining their status. There are NGOs acting to improve the situation of foreigners.

Applicable regulations do not establish a framework for institutional discrimination on the basis of ethnicity. Nonetheless, current anti-discrimination legislation does not fully comport with Directives 2000/78/EC and 2000/43/EC. Directive 2000/43/EC was implemented only in the realm of employment and social security, while it also covers training, education, social security, healthcare, housing and access to goods and services. The Special Body has been not established yet. Currently, the Government Plenipotentiary for the Equal Status of Women and Men fulfils this role until a special body is established. Thanks to establishment of the Act on promoting employment and labour market institutions as well as amendment of the Labour Code, a series of regulations regarding employment discrimination were introduced in 2004.

Despite existing employment discrimination legislation, courts have not considered many cases in this realm. Data processed by the Organizational Department of the Ministry of Justice indicates that in the first six months of 2004, there were 65 cases for damages for violation of equal treatment in employment (art. 18^{3d} of the Labour Code) in district courts of the first instance. However, this data does not indicate the number of cases brought referencing discrimination on the basis of race or ethnic origin. These statistics encompass all cases of violation of equal treatment in employment without indicating the basis for discrimination. Hence, it also includes alleged discrimination due to gender, age, disability, race, religion, nationality, political conviction, union membership, ethnic origin, denomination, sexual orientation, as well as based on employment for a set or unlimited period of time or for full or part time.

When discussing the small number of employment discrimination cases, it is important to review the surrounding social context. In recent years, unemployment has been high in Poland (about 20 per cent), which, for obvious reasons, does not encourage employees to file cases against employers. People's low awareness with respect to the ability to execute rights in this realm is also a cause of the low number of such cases. Yet another obstacle is the bad state of Polish courts and the slow tempo of resolution of cases thereby. The last two reasons seem important with respect to discrimination in other realms as well.

In summary, issues of discrimination for racial and ethnic reasons are not very visible in the social arena, and this applies to their scale as well as prevention. A series of activities are required to change this situation, the most urgent of which seem to be implementation of all recommendations of European anti-discrimination law to national legislation, conducting thorough analytical research of discrimination and on the basis thereof development of detailed solutions, raising public awareness regarding existing anti-discrimination legislation and the ability to apply it. Building a culture of tolerance and multiculturalism also seem quite significant, because although racism is not currently a pressing problem, the presence of xenophobic attitudes among the public is unsettling.

The series of national programs begun this year aimed at preventing discrimination and improving the situation of the most vulnerable groups raises the hope the situation in this realm will improve. This will, however, require extensive efforts from the state, as well as cooperation among social organizations, especially those uniting people most subject to ethnic discrimination.

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Definitions and sources

There is no definition in Polish law of a group affected by racism and xenophobia. From the point of view of groups subject to racism and xenophobia, it is significant that their members benefit from the constitutional norm establishing the right to equal treatment. Art. 32 of the Constitution¹ provides, “everyone is equal before the law. Everyone has the right to equal treatment by public authorities. No one may be discriminated in political, social or economic life for any reason whatsoever.” Here, by using the general concept of “everyone” and “no one,” Legislators grant protection to all persons who may fall victim to unjust treatment due to racial prejudice or prejudice against aliens.

Persons of a race other than Caucasian (white) and nationalities other than Polish are potentially most subject to racism and xenophobia, i.e. Polish citizens who are members of national and ethnic minorities as well as foreigners arriving in Poland (immigrants, persons staying for a period shorter than two months, refugees). It is to these groups that legal concepts such as foreigner, refugee, national and ethnic minority apply. Since about 98 per cent of the Polish population belongs to the Roman-Catholic church, persons subject to discrimination based on religion would be those belonging to other churches, denominations as well as agnostics and atheists.

The concept of “foreigner” is a statutory term, statutorily defined by art. 2 of the Act on Foreigners², which provides, “anyone not possessing Polish citizenship is a foreigner.”

Polish law has not developed its own definition of “refugee.” Art. 13 of the Act on granting protection to refugees on the territory of the Republic of Poland³, provides refugee status within the Republic of Poland is granted to a foreigner who meets conditions for being recognized as a refugee defined in the Geneva Convention and New York Protocol.

The concept of a national and ethnic minority is a statutory term not statutorily defined. The term appears in art. 35 of the Constitution of the Republic of Poland, which sets out, among other things, that Polish citizens belonging to national or ethnic minorities are assured freedom to maintain their own language, customs and traditions as well as the develop their own culture. The conjunctive term ‘ethnic and national minority,’ appears in the Constitution as well as lower level legislation, meaning the rights awarded refer both to national and ethnic groups. Only the act dated April 12, 2001, Election law for the Sejm and Senate of the Republic of Poland⁴, uses the more limited term “national minority,” with the privileges it awards referring only to national and not ethnic minorities. Rights awarded to minorities inure only to citizens of Poland.

Currently, work is ongoing in the Sejm on a draft Law on national and ethnic minorities in the Republic of Poland being drafted by the National and Ethnic Minority Commission of the Polish Sejm [NFP/PL/0055]. In art. 2, the proposed act contains a legal definition of national and ethnic minority. According to the draft Law, a national or ethnic minority is considered to be “a group of citizens of the Republic of Poland of a distinct origin, traditionally inhabiting the territory of the Republic of Poland, remaining a minority in relation to the rest of the citizens, characterized by the aspiration to maintain their own language, customs, tradition, culture, religion or national or ethnic consciousness” (Art. 2).⁵ However, according to the current version of the draft Law on National and Ethnic Minorities, there are two necessary conditions: (1) the holding of Polish citizenship; and (2) “traditional inhabitation.” Thus, recent minorities such as the Vietnamese, who constitute a rather large group in Poland and

¹ Constitution of the Republic of Poland – Poland/ Dz.U. 1997/78/483 (02.04.1997)

² Act on Foreigners – Poland/Dz.U. 2003/128/175 (13.06.2003)

³ Act on granting protection to refugees on the territory of the Republic of Poland – Poland/Dz.U. 2003/128/1176 (13.06.2003)

⁴ Election law for the Sejm and Senate of the Republic of Poland – Poland/Dz.U. 2001/46/499 (12.04.2001)

⁵ Poland, National and Ethnic Minorities Committee of the Sejm (2002) *Commission Project on the Law on National and Ethnic Minorities in the Republic of Poland*, available at: <http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/223>, (15.10.2004).

some of whom already have Polish citizenship, are excluded from the provisions for national minorities. Moreover, persons of German, Belarusian and Lithuanian origin, *inter alia*, residing in Poland, who do not have Polish citizenship, will not be treated as representatives of a national minority (even though the Polish State recognizes the existence of the German, Belarusian and Lithuanian minorities).

Polish law does not contain a legal definition of a group threatened by discrimination due to religion or world-view. In fact, there are no regulations controlling relations among social groups with respect to protecting them against instances of religious and world-view intolerance, i.e. these groups are not even covered by statutory terminology, nor are they statutorily defined (“religious minority” could be such a term). Only regulations, which constitute rights, can be found. Art. 53 of the Constitution assures everyone freedom of conscience and religion.

As far as the sources are concerned, information for the five areas presented in this report is limited and difficult to obtain.⁶ Systematized data such as statistics for 2004 is nearly non-existent, made all the more unattainable because the calendar year has not ended as of this report’s preparation. There are also very few organisations and institutions collecting information regarding ethnic or national discrimination in Poland. The highest (relatively) amount of information is available regarding the situation of the Roma minority within the Małopolska Voivodship because the greatest number of assistance programs is conducted in this region. In turn, the data therefrom regarding immigrants is the most fragmentary.

Out of the five areas, the greatest number of works concerns legislation. Analysis of the law with respect to anti-discrimination regulations was recently conducted as part of Twinning Project Poland PHARE 2002 *Strengthening Anti-discrimination Policies* (PL 02/IB/SO/06, FM No. 2002/000-605.01.02) [ACT/PL/0043], run by the Office of the Government Plenipotentiary for the Equal Status of Women and Men [NFP/PL/0016] in cooperation with the Austrian Ludwig Boltzman Institute of Human Rights. Project realisation began in August 2003 and will last until November 2004. Two publications prepared as part of the project are devoted to legal analysis.⁷

The *National Program Against Racial Discrimination, Xenophobia and Related Intolerance 2004-2009* also contains a legal section [ACT/PL/0178]. The program arose from Poland’s international obligations to execute recommendations contained in the final documents of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, convened by the General Assembly of the United Nations (Durban, August 31 – September 7, 2001). The Government Plenipotentiary for the Equal Status of Women and Men [NFP/PL/0016] with the Ministry of Foreign Affairs coordinated work on the document. The Council of Ministers of the Republic of Poland adopted the plan for execution on May 18, 2004.⁸

There is a want of information regarding ongoing court cases concerning discrimination. Because anti-discrimination legislation has been applicable in Poland only recently, not many people have had an

⁶ The inadequacy of data regarding racist and ethnic discrimination was noted in the *National Program Against Racial Discrimination, Xenophobia and Related Intolerance 2004-2009*. Thus, one of the tasks set therein is the development and implementation of socio-demographic data to monitor racism, racial discrimination and xenophobia. Developing such a system is planned for the project’s first year and the entities realizing this task are the Government Plenipotentiary for Equal Status of Women and Men in cooperation with the Ministry of Interior and Administration and Central Statistical Office. However, no data was available as of the preparation of this report.

⁷ Weyss B. *Analysis of the status quo of Polish Anti-Discrimination Legislation and Policies* written by Birgit Weyss, (forthcoming); Liegl B. Perching B. Weyss B., *Brochure on Anti-Discrimination Legislation and Policies in Poland*, (forthcoming).

⁸ Poland, Government Plenipotentiary for Equal Status of Women and Men (2004) *Krajowy Program Przeciwdziałania Dyskryminacji Rasowej, Ksenofobii i Związanej z Nimi Nietolerancji 2004-2009* [*National Program Against Racial Discrimination, Xenophobia and Related Intolerance 2004-2009*], available at: http://www.rownystatus.gov.pl/ver_pl/r_przedysk.htm, (15.10.2004).

opportunity to take advantage thereof. Awareness of the ability to execute rights in this realm may also not be sufficient. Moreover, a particular suspicion with the length and costs of the court proceedings has led to the common conviction among Poles that bringing a case to court will not bring the desired results but rather burden the plaintiff with court fees. Many victims of discrimination therefore take up a passive attitude in asserting their rights, as noted by the authors of one of the legal analyses developed as part of the aforementioned Twinning Project [ACT/PL/0043].⁹

The Commissioner for Civil Rights Protection [NFP/PL/0108] is certainly an important source of information regarding instances of discrimination. The complaints received thereby also include discrimination against persons belonging to national and ethnic minorities. Nonetheless, such cases are few. Information regarding matters filed with the Commissioner is published in the CCRP Bulletin (it is thus publicly available). However, the report for 2004 will be published in the first quarter of 2005. Information for 2004 contained in the report was obtained earlier by way of individual request.

With respect to research regarding issues discussed in this report, as of 2002 to May 2004, the Institute of Social Policy of the Warsaw University took part in the Fifth Framework Programme of the EU entitled *Xenophob – The European dilemma: institutional patterns and politics of 'racial' discrimination* [ACT/PL/180]. Three reports were drafted as part of this project that present the situation of immigrants in Poland. The first report presents the general demographic, socio-economic and politic situation that has its impact on the position of immigrants in Poland.¹⁰ The second one mainly concerns the institutional systems of the labour market and education, which were presented in light of legal regulations and available data.¹¹ The third work is a report and record of conclusions from focus group interviews. People from various countries, with differing education levels, living in three separate Polish cities (Warszawa, Zielona Góra, Lublin) took part in the research.¹² Among the five areas discussed in this report, the most information collected as part of the *Xenophob* project concerns the situation of foreigners in the realm of employment and education. In May 2004, the Institute of Social Policy completed its work on the project. It is being continued by the Institute of Public Affairs [NFP/PL/0076].

Among NGOs, only the “Never Again” Association [NFP/PL/0072] collects and publishes reports regarding instances of discrimination due to nationality or ethnicity, with particular emphasis on violence related thereto (physical and verbal). Each year, the *List of Incidents – the Brown Book* is published in the *Never Again* bulletin and the association’s internet page. It contains descriptions of assorted examples of xenophobia such as aggression against members of anti-Nazi groups, the homeless, homosexuals, ethnic-based aggression, acts of football fans, anti-European picketing, cases of devastation of locations with racist or Fascist graffiti or signs, etc. The sources of the reports are local press articles or the observations of the association’s members and supporters. The reports presented are primarily notes and do not inform whether the described events were prosecuted or made it to any court. Monitoring such issues is not one of the priorities and tasks set out by the “Never Again” Association [NFP/PL/0072]. As of the completion of this report, the *Brown Book* for 2004 had

⁹ Liegl B. Perching B. Weyss B., *Brochure on Anti-Discrimination Legislation and Policies in Poland*, (forthcoming).

¹⁰ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Discriminatory Landscape I*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_eng.pdf, (15.10.2004).

¹¹ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004).

¹² Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004).

not yet been published and only data from previous years was available. The information regarding incidents from 2004 included here was provided to us prior to official publication.

Among other NGOs active in Poland, two conducted projects in 2004, which evaluated the Roma situation in the Małopolska region. Between February and October 2004, the Crisis Intervention Society [NFP/PL/0021] along with the Association of Roma Women in Poland [NFP/PL/0026] have been running the *Our Own Issue* [ACT/PL/0179] project as part of PHARE 2001 *Civil Society Development*. Its main goal was to assure participation of Roma women in civil society. It was not the project's task to monitor the Roma situation, however, the direct contact with the Roma community meant the Crisis Intervention Society [NFP/PL/0021] had a certain number of reports regarding violence against that group available. The information collected is intended for internal use and is not publicly available. The information contained in this report was provided to us pursuant to individual requests. In November 2004, the Association intends to draft a report on the *Our own issue* project, which shall likely contain at least a portion of the information we were provided.

The second evaluation of the Roma situation in the Małopolska region from 2004 concerned education and was performed in August and September by the Roma Educational Association "Harangos" [NFP/PL/0133] as commissioned by the Advisory Office Joint Programme between the Polish Ministry of Interior and Administration and the British Embassy in Warsaw. It was financially supported by the British Embassy. The research was meant to evaluate the implementation of the educational part of the *Pilot government program for the Roma community in the Małopolska Voivodship for the years 2001-2003* [ACT/PL/0039]. Field visits and interviews with Roma parents and school authorities in nine different locations where the program had been implemented were planned. The report from the research is not yet ready. Conclusions from the monitoring we cite in this report were presented during the side meeting held during the OSCE Human Dimension Implementation Meeting in Warsaw on October 11, 2004.¹³

In August and September 2004 we made requests personally or by telephone to NGOs and institutions we identified as potentially having appropriate knowledge to make up for the insufficiency of data. There were organisations involved in issues of human rights, building a civil society and providing legal advice to refugees and migrants, etc. (Caritas [NFP/PL/0056], Polish Humanitarian Organisation [NFP/PL/0058], Crisis Intervention Society [NFP/PL/0021], Polish Association for Legal Education [NFP/PL/0134], Education Society for Małopolska [NFP/PL/0034], the "Open Republic" Association Against Anti-Semitism and Xenophobia [NFP/PL/0017], UNHCR [NFP/PL/0079], and refugee assistance centres). We also interviewed representatives of minority organisations. Further, we interviewed employees executing the *Programme for the Roma Community in Poland* [ACT/PL/0038]. Therefore, we contacted schools, municipal offices, county offices, municipal social assistance centres and NGOs. However, it must be emphasized that none of the organisations and institutions enumerated above conduct ongoing monitoring of discrimination of national and ethnic minorities or immigrants regarding education, housing, employment or racist violence. They obtain information in this regard in the course of performing their statutory activity and execution of particular projects. The information collected is not systematized, processed or publicly available. Consequently, data obtained from these sources are descriptions of single events, general remarks and conclusions regarding the situation of minorities and their main problems. The information is valuable as the representatives of organisations or institutions primarily obtain such from constant and direct contact with national minorities. At times, when we deemed a certain event required further explanation, we also contacted representatives of the Police to verify the previously obtained information against their opinion (in such cases, we provide the views of both sides in this report).

¹³ Mirga A., *Evaluation of educational part of the Pilot Government Program for the Roma Community in the Małopolska Voivodship*, unpublished paper presented during the side meeting of the OSCE Human Dimension Implementation Meeting in Warsaw on October 11, 2004.

1. Analysis of the five main areas

I. Employment

A. Publicly available evidence of racism and discrimination

It is difficult to obtain any data regarding discrimination in employment based on nationality or ethnic origin in Poland. Though an analysis of the law in this realm has been undertaken,¹⁴ little is known regarding the situation in practice. The insufficiency of statistical data results primarily from the lack of strict information regarding the size of particular groups (especially migrants). Other kinds of data are also miserly as there is no institution or organisation in Poland specializing in collecting complex information regarding this sort of discrimination.

The available statistics referring to foreigners do not allow conclusions to be drawn regarding existence of discrimination against a given group on the Polish labour market. This is because they refer only to persons legally employed pursuant to individual work permits, while the actual number of foreigners working in Poland is much higher. The Ministry of Economy and Labour accounts for the following in its data: country of origin, sector of employment, profession, occupation, validity period of work permits, territorial distribution of work permits, size of enterprises employing foreigners, work permits granted to foreigners engaged by foreign employers in the realization of export services. Any available numerical data from recent years concerning these issues, along with a brief analysis thereof, have been presented in the *Discriminatory Landscape II* report (which also took into account the educational level of foreigners granted work permits as well as the ownership of enterprises employing foreigners – the most current statistics of the Ministry of Economy and Labour do not contain this information). These statistics indicate that out of the top four countries home to foreign workers in Poland, three of those are from Western Europe (Germany, France, Great Britain; Ukraine is first), they usually live in Warsaw and its surrounding areas, they are typically extremely well educated and hold prominent, elite positions. However, the authors of the report emphasize that this data – already fragmentary itself – is full of additional shortcomings. Above all, it concerns the number of work permits granted and not the actual number of foreigners employed. Therefore, it is impossible to learn how many foreigners obtained more than one work permit at the same time. Furthermore, during 2000–2002, the number of permits prolonged for the same employees was not registered. It is also unknown how many foreigners who obtained a work permit decided to actually work in Poland.¹⁵

With respect to unemployment among migrants, even though parties granted residence permits or refugee status, those who are citizens of EU member states or states with which the EU has concluded agreements on the free flow of persons may register as unemployed in labour offices, no systematic

¹⁴ Weyss B. *Analysis of the status quo of Polish Anti-Discrimination Legislation and Policies* written by Birgit Weyss, (forthcoming); Liegl B. Perching B. Weyss B., *Brochure on Anti-Discrimination Legislation and Policies in Poland*, (forthcoming); Poland, Government Plenipotentiary for Equal Status of Women and Men (2004) *Krajowy Program Przeciwdziałania Dyskryminacji Rasowej, Ksenofobii i Związanej z Nimi Nietolerancji 2004-2009* [National Program Against Racial Discrimination, Xenophobia and Related Intolerance 2004-2009], available at: http://www.rownystatus.gov.pl/ver_pl/r_przecedysk.htm, (15.10.2004); Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004).

¹⁵ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, p. 37, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004).

national unemployment statistics broken down by foreigners are maintained. Authors of the *Discriminatory Landscape II* report obtained unofficial data of the District Job Office in Warsaw, which indicate the percentage of foreigners in the unemployed cohort is so low that by itself it would not allow for a conclusion regarding the existence of discriminatory mechanisms. As of March 31, 2004, that indicator totalled 0.22 per cent (of the 65,681 unemployed there were 145 foreigners, primarily from former socialist block countries, of which 53 had higher education).¹⁶ The report also cited data about immigrants from the general census. That data indicates people from Eastern Europe remain jobless within their groups more frequently than those from Western Europe. However, the difficulty of drawing conclusions regarding the existence of discrimination against this group on the job market from the census data was noted as the picture of immigration presented by the census seems to materially differ from the actual scale and structure of immigration.¹⁷

To date, the most complete work regarding discrimination against foreigners in Poland with respect to employment are reports prepared as part of the *Xenophob* project (hitherto conducted by the Institute of Social Policy of the Warsaw University) [ACT/PL/180].¹⁸ Here, available data and the picture of the legal situation in the period under discussion is supplemented with results of focus group research using visitors from various countries with differing education levels settled in three different Polish cities. The accepted research method does not allow for quantitative generalizations but leads to the isolation of several areas of discrimination against foreigners related to labour market functioning. Foreigners primarily complain of complicated regulations related to their employment, unclear and slow procedures, as well as the incompetence and negative attitude of officials at job offices (though the negative opinion regarding job offices does not really deviate from the opinion held by Poles in this respect). They also point to problems with certification of diplomas and difficulties obtaining rights to perform a profession.

It could be expected that a reliable reconnaissance of the actual status of national or race-based discrimination respecting employment in Poland would be preformed by the Ministry of Economy and Labour in preparing to implement the EQUAL program. However, such work has not been performed. Only the *Sector Operational Human Resource Development Program for 2004-2006* prepared by an inter-ministerial team and the *EQUAL Community Initiative Program for Poland 2004-2006* indicate two groups, out of those that interest us here, as being threatened with social exclusion by remaining mired in an extremely difficult situation on the labour market: the Roma minority and refugees. It correlates the Roma's difficult situation to their very low educational level. In the case of refugees, it deemed that the twelve-month individual integration program during which help centres are obligated to provide assistance to families is insufficient to attain their complete social and professional

¹⁶ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, p. 36, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004)

¹⁷ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, p. 55, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004)

¹⁸ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004); Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004)

integration. The report notes that although persons completing the program may request social assistance benefits, this support does not cover the costs of the extended integration process.¹⁹

One could expect more precise data regarding national or race-based discrimination in employment or documented evidence of such discrimination would be possessed by organisations providing material and legal assistance to persons who feel they have been discriminated against (citizen's advisory offices, social organizations, NGOs providing assistance to the Roma minority as well as refugees and migrants). Nonetheless, the information obtained directly from persons involved in such activity indicates problems regarding national or race-based discrimination on the labour market are raised extremely rarely (no such cases were noted by the Citizens Advice Bureaux or any of the thirty offices in Poland), or, if such are reported (to NGOs such as the Polish Humanitarian Organisation, Helsinki Foundation for Human Rights, or Caritas, which come in contact with foreigners' complaints primarily regarding their inability to find legal employment) – no documentation is maintained in that regard.

In relating informal issues they come in contact in the course of their work, NGO activists mention problems of people who have not been awarded refugee status but have received permission for tolerated stay. They are not covered by the individual integration program (which includes assistance, *inter alia*, in finding employment), though their integration needs are the same as that of refugees.

With respect to data concerning the Roma, particular entities possess some information regarding their employment situation, which data is usually collected for a specific program or undertaking. For example, entities that submitted projects as part of the government *Programme for the Roma Community in Poland* [ACT/PL/0038] (local authorities, social assistance centres, family assistance centres), had usually taken the closer look at the Roma professional situation within their areas and continued to monitor it. However, there is no obligation to convey this sort of information to the program coordinator (Ministry of Interior and Administration) in a standardized format, which is why the given local office or institution must be contacted in order to update the information. The collected data usually describes the level of unemployment among the Roma. In some regions the unemployment rate nears 100 per cent (only individual persons are employed, usually in professions not requiring any qualifications – in municipal maintenance, communal services, intervention work). The reasons usually given for the high unemployment rate by parties implementing the government program are the Roma's lack of education and qualifications as well as their lack of a desire to be employed. It is difficult to relate the high unemployment rate in this social group directly to discrimination in employment without more complex data and research in this realm.

In 2004, the Commissioner for Civil Rights Protection [NFP/PL/0108] was informed of only one problem regarding Roma employment discrimination. The issue applies to difficulties in finding employment by the Bergitka Roma group and those in Nowa Huta, where they were laid off due to restructuring of the steel mill. The Association of Roma Women in Poland [NFP/PL/0026] the Roma Association – Kraków Nowa Huta [NFP/PL/0060] submitted the complaint.

Activists of the Crisis Intervention Society [NFP/PL/0021] have also encountered one instance of discrimination of a person of Roma origin while monitoring the Roma situation in the Małopolska Voivodship as part of the *Our Own Issue* project (unpublished data, made available to HFHR for purpose of this report). A 26-year old Roma woman responded to a newspaper ad placed by a restaurant in Nowy Targ for a waitress. She was initially kindly received as it was thought she was a controller from the Sanitary-Epidemiological Station. When it turned out she had come to seek employment, she was told, “they don't hire Gypsies,” because they do not want her “scaring off clients.” The woman did not notify anyone of the discrimination aside from her closest family members.

¹⁹ Poland (2004) *Sektorowy Program Operacyjny Rozwój Zasobów Ludzkich 2004-2006* [Sector Operational Human Resource Development Program for 2004-2006], available at: http://www.up.gov.pl/efs/index.php?o=sektorowy_program_operacyjny (15.10.2004)

In addition to a want of quantitative data regarding national and ethnic minorities as well as immigrants in Poland and the lack of specialized institutions, which would monitor and analyze their situation on the labour market, a number of additional factors contribute to the lack of information on national, race or ethnic-based employment discrimination in Poland.

Above all, detailed regulations prohibiting employment discrimination due to race, nationality and ethnic origin (pursuant to the guidelines of Directive 2000/78/EC and Directive 2000/43/EC) have been effective only as of January 1, 2004. It seems awareness of the ability to execute rights in this realm is still insufficient. Only one complaint regarding this topic has been filed with the Commissioner for Civil Rights Protection [NFP/PL/0108] in 2004 (it was mentioned above, and was filed by the Roma). Data provided by the Organizational Department of the Ministry of Justice indicates that in the first six months of 2004, district courts of the first instance reviewed 65 cases for damages involving violation of equal treatment in employment (art. 18^{3d} of the Labour Code). Of those, 27 cases were closed, with one case being settled, in two cases the court's judgment was amended and in one case the judgment was handed back down. The remaining cases were continued to a future time. Eleven cases were considered by district courts of the second instance in the first six months of 2004, involving art. 18^{3d} of the Labour Code (two cases were closed, of which one the court's judgment was amended and the remaining matters were continued). This information does not indicate the number of cases filed regarding discrimination for reasons of race or ethnic origin, as statistics presented combine all matters regarding violation of equal treatment in employment without indicating the grounds for discrimination. Thus, they also include cases of alleged discrimination due to gender, age, disability, race, religion, nationality, political conviction, union membership, ethnic origin, denomination, sexual orientation, as well as due to employment for definite or indefinite periods of time or due to full or part-time employment.

Secondly, the high level of unemployment in Poland does not favour the filing of complaints against employers. According to the Central Statistical Office, the registered unemployed among the professionally active population for the last few years has hovered around 20 per cent. For example, in July 2003, it totalled 19.6 per cent, in January 2004 – 20.6 per cent, and July 2004 – 19.3 per cent.²⁰ In these circumstances, anyone experiencing employment discrimination would likely not be willing to publicize this situation. It is also worth noting that costs of employment are extremely high in Poland, thus employment “under the table” is popular. Poles and, quite often, employment migrants work on these terms (to employ the migrants legally, the employer would have to perform additional obligations and formalities consequently making legal employment even less attractive). Focus group research conducted as part of the *Xenophob* project [ACT/PL/180] indicates foreigners are aware of the difficult situation on the Polish labour market and blame that situation, not discriminatory mechanisms, for the employment difficulties experienced.²¹

Regarding immigrants, the authors of the *Focus Group Interviews with Immigrants* report drafted as part of the *Xenophob* project [ACT/PL/180], note the presence of foreigners on the Polish labour market is rarely a part of the public debate and no threatening climate is formed around this issue as is the case in some states. This is largely the result of a relatively low number of immigrants in Poland, especially when compared to Western European states. Particular immigrant groups are generally associated with specific tasks (professions), e.g. citizens of the former USSR with petty trade (often illegal), the Vietnamese with gastronomy or garment sales and people from Western states with

²⁰ Central Statistical Office: <http://www.stat.gov.pl>

²¹ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, p. 47, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004).

business activity, etc. However, the report's authors admit certain prejudices do exist, especially with respect to people from Eastern Europe, which largely results from a broader historical context.²²

Analyzing the situation of migrants, refugees and the Roma minority on the labour market is one of the tasks within the province of the *National Program Against Race Discrimination, Xenophobia and Related Intolerance* [ACT/PL/0178] to be realized in the program's first year. The entity selected to realize this task is the Ministry of Economy and Labour in cooperation with the National Labour Inspectorate, Government Plenipotentiary for Equal Status of Women and Men [NFP/PL/0016] and NGOs. However, no data sets were available as of the drafting of this report. The task of developing and implementing a system for monitoring observance of equality in access to employment, professional training, labour unions, remuneration and social security of migrants, refugees – as well as men and women belonging to national and ethnic minorities, is planned for the third and fourth year of the program.

B. Process for receiving, recording and processing complaints of racism or discrimination

There is no particular process for evaluating discrimination complaints under labour law regulations. The means of investigating violations of the prohibition against discrimination are the same as for other employment entitlements – a complaint with the labour court, grievance to the National Labour Inspectorate and request for initiation of a reconciliation proceeding before reconciliation commission. An important change recently introduced into the labour code is the shift of the burden of proof to the defendant, who needs to prove it was guided by objective criteria when:

- refusing to initiate or terminate an employment relationship,
- setting unfavourable remuneration for employment, other unfavourable employment terms, passing over for promotion or in the awarding of other employment related benefits,
- passing over in selecting employees for participation in training to improve professional qualifications.

C. Good practices

Good practices against racism and discrimination of national and ethnic minorities in employment that have taken place during 2004 primarily apply to professional activation of the most vulnerable groups and enabling them to enter the labour market.

Undoubtedly, it is the Roma who remain in the worst position in this realm. The main sources of their income are social assistance, "grey market" employment as well as trips abroad (usually to Great Britain). Improvement of the Roma professional situation is one of the goals of the government *Programme for the Roma Community in Poland* [ACT/PL/0038]. In 2004, funds were distributed directly for this purpose to entities from ten localities, which, by presenting their own projects, applied for participation in the government program. Professional training courses, creation of positions and adult schooling (Polish language classes, teaching reading and writing) were all planned. Because the funds awarded for these tasks reached the grantees only by mid-year, realization of the majority of them is only beginning. Nonetheless, certain problems are already appearing in some localities. For example, three positions were made available to the Roma in Nowe Miasto Lubawskie but only one person began employment – the others were not interested.

²² Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, p. 6, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004).

It seems relatively good effectiveness in the professional activation of the Roma may be achieved by supporting activities that only indirectly concern the subject. These are small-scale successes, nonetheless they merit mention. Thus, when it comes to educational programs for Roma children realized as part of the government program, they undoubtedly inherently broaden the children's subsequent opportunities on the labour market. Further, these projects provide employment to Roma assistants – about fifty assistants are to be employed in school year 2004/2005. In towns with Roma musical groups, it has been observed that artistic activity is the source of income for a large portion of the local Roma community. Thus, additional financing of such activity also becomes a form of professional activation of the Roma.

Social assistance is the public authority responsible for activities taken on behalf of refugees. Refugees are granted assistance for a period of twelve months as part of the individual integration program, with the assumption that it supports the process of integrating foreigners with Polish society. The program is developed by the poviaste family assistance centre appropriate for the locality of the refugees' stay in cooperation with the interested party and includes: financial benefits for living expenses, expenses for learning Polish and non-material assistance (counselling, help in taking care of matters in offices or institutions, psychological or legal assistance, etc.), which also includes professional counselling and support in finding employment. Often, however, the twelve-month program is insufficient to attain the refugees' complete social and professional integration. Therefore, NGOs are involved in further assistance to refugees.

Facilitating refugees' entry onto the Polish labour market is one of the main goals of programs being realised by e.g. the Polish Humanitarian Organisation [NFP/PL/0058]. Since the outset of 2002, this NGO has maintained a club for refugees in Warsaw where adult refugees may take advantage of free language lessons, computer skills workshops, read Polish and foreign publications or borrow a book as well as obtain specialized assistance in seeking employment. Individual consultations are provided to help orient refugees in seeking employment in Warsaw and the surrounding areas, learn the problems and barriers they encounter while attempting to find employment and jointly establish a further course of activity. The Polish Humanitarian Organisation [NFP/PL/0058] also runs the Integration Program for refugees, which includes Polish language courses taught by professional instructors from two Warsaw language schools: IKC (Foreigners' Educational Institute) and BSA (Business Service Agency). These courses are financed from the budget of the Social Issues Department of the Mazowieckie Voivodship. The employees and volunteers at PHO also seek employment offers for refugees, consult with instructors at labour clubs and organize classes to teach refugees job-finding skills.

Some NGOs are particularly willing to hire refugees in their organizational structures. An example is the Lublin branch of the Emaus organization, which runs a community house for the marginalized and homeless.

As part of the programming process of the EQUAL Community Initiative in Poland, five out of the nine subjects common to all member states were selected. Three issues particularly concern the problem of discrimination and inequality on the labour market, *inter alia*, due to national or ethnic origin:

- Subject A: Facilitating entry and re-entry onto the labour markets of persons having difficulties with integration or reintegration for the purpose of promoting a labour market open to all (33.8 per cent of the total EQUAL budget). In addition to ethnic minorities (with representatives of the Roma minority), repatriates and their family members are included in the social groups for which activities within Subject A will be realised.
- Subject D: Reinforcing the social economy (third sector), in particular, for the benefit of local communities and improvement of the quality of employment positions (27.4 per cent of the total EQUAL budget). In addition to ethnic minorities, repatriates and their family members are included in the social groups for which activities within Subject D will be realised.

- Subject I: Assistance in the social and professional integration of persons seeking refugee status (1.7 per cent of the total EQUAL budget). Currently, the scope of the activities of Subject I covers only persons seeking refugee status excluding recognized refugees and repatriates, which have been included in the four remaining subjects of EQUAL in Poland, particularly Subjects A and D. The purpose of activities being realised as part of this subject is to improve the institutional care system, develop analysis and research aimed at diagnosing and forecasting immigration and that group's situation on the labour market, and raise social awareness in this realm.

The institution managing the EQUAL program is the Ministry of Economy and Labour. The National Support Structure (implementing institution) for this program is the Cooperation Fund. The deadline for filing applications to receive funds from EQUAL passed on August 31, 2004. A total of 752 applications were filed (565 apply to the above-referenced subjects, including: 429 – Subject A, 127 – Subject D, 9 – Subject I). Currently, the applications are being evaluated and approval is planned for October 28. No evaluations were available as of the preparation of this report.

With respect to activities directed at eliminating employment discrimination, the PRIMUM Public Relations agency has undertaken to carry out the trans-European social campaign, *For Diversity. Against Discrimination* in Poland. This campaign began in June with a press conference. In September, two Euro-Truck stops were organized in Krakow and Warsaw, where a special truck served as an information point for the concerts that were going on. However, although the event was advertised in the media, it garnered little interest from residents of Krakow and Warsaw. This is undoubtedly affected by the as yet low social awareness with respect to these issues combined with other factors named above (high rate of unemployment in Poland, lack of evidence of discrimination against foreigners working here legally).

In June 2004, as part of the *Strengthening Anti-discrimination Policies* (conducted in the framework of the Twinning Project Poland) a training was held for thirty officials and labour inspectors, who were identified as representatives of professional groups with the highest potential for abuse in the form of discriminatory treatment, *inter alia*, due to race or ethnic origin. The assumption was that in the future they would carry out similar trainings for their professional group to expand the circle of people sensitive to issues of preventing discrimination able to effectively fight this problem.

D. Undocumented migrant workers

The number of foreigners legally employed in Poland is small. Data from the Ministry of Economy and Labour indicates that in 2003 there were 18,841 work permits issued. Nevertheless, the number of foreigners actually working in Poland is much higher than statistics indicate. It will be much more difficult to ascertain this number as of Poland's accession to the European Union, since citizens of new member states no longer require such permits, nor are they required from citizens of Great Britain, Ireland and Sweden, or other EU citizens, who, upon Poland's accession, had already worked here for a period of at least 12 months. Estimates regarding the number of employees with unregulated employment status usually oscillate around 100,000 – 150,000.²³ They primarily come from former Soviet republics and mainly perform seasonal and temporary work. It is difficult to estimate whether the number of irregular workers is rising or falling with any certainty.

Foreigners working illegally in Poland were given some attention by the authors of the *Discriminatory Landscape II* report. They may be divided into three groups, by country of origin:

- citizens of the former USSR, dominated by Ukrainians and Byelorussians,
- residents of Asian and African states, chiefly the Vietnamese,

²³ Golinowska S. (ed.) (2004) *Popyt na pracę cudzoziemców [Demand for the work of foreigners]*, Warsaw: Institute of Labour and Social Studies, p. 137.

- expatriates from Western states (the smallest group).

The authors of the report noted that usually in Poland the groups with the largest legal influx of workers also have the highest numbers of illegal workers, though this does not apply to citizens of Western states. To some extent, this may be the result of those working in the official economy inviting members of their families and friends who decide to work on the “grey market.”

The majority of foreigners working in Poland without a permit are in the country legally. These are mainly pseudo-tourists and students that take up temporary activities. They are most frequently involved in employment for the following industries:

- construction and renovation,
- farming and gardening,
- tailoring,
- domestic services (cleaning, cooking, childcare, care for the elderly and ill),
- trade,
- gastronomy.

Persons from the former Soviet republics as well as Asian countries usually work in professions belonging to these industries, with the employment usually being seasonal and temporary.²⁴ With respect to foreigners employed in Polish households (the large majority of which work under the table), research by the Institute of Labour and Social Studies conducted in 2001–2002 indicates that in 2001 nearly 90,000 Polish households employed foreigners. This is a significant majority, though it does not directly reflect the number of foreigners employed as this type of employment may be temporary and one person is often employed by a number of employers.²⁵

Labour legality services have been active in Poland since 1995, with their main goal being to limit the pathologies on the Polish labour market, particularly illegal employment. In 2003, these services performed a total of 25,766 controls. In 3,913 of the controlled entities there were 7,922 cases of illegal employment or other illegal gainful employment found, including 2,711 cases of illegal employment of foreigners. The highest number of such cases were found and documented at controlled entities involved in wholesale and retail trade – 1,870. The highest numbers of illegally employed foreigners were found in the following voivodships: Lubelskie – 989 persons, Mazowieckie – 388 persons and Świętokrzyskie – 355 persons (middle and eastern Poland), with the lowest being in northern Poland and Silesia.²⁶

A comparison of the number of persons from abroad working in Poland illegally with the number of cases discovered points to the low effectiveness of the labour inspections. Thus, the above data describe only a minute portion of illegal employment and cannot be used to draw conclusions regarding illegal employment of foreigners in Poland.

²⁴ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophobia – The European Dilemma: Institutional Patterns and Politics of ‘Racial’ Discrimination*, p. 53, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004).

²⁵ Domaradzka E. Morecka Z. (2004) “Zatrudnienie obcokrajowców w polskich gospodarstwach domowych” [“Employment of foreigners in Polish Households”], *Polityka Społeczna*, no. 3.

²⁶ Poland, Ministry of Economy, Labour and Social Policy, Department of Labour Market, (2004) *Zbiorniki wyników działalności służb kontroli legalności zatrudnienia w 2003 roku* [Summary Outcome of Labour Legality Services in the Year 2003], available at: <http://www.praca.gov.pl/files/20040322134110.doc?PHPSESSID=a343c4fc368f185ed03ef1ae4d337b73> (15.10.2004).

II. Education

A. Publicly available evidence of racism and discrimination

The Ministry of National Education and Sport possesses statistics regarding the number of schools providing education for national and ethnic minorities in Poland. However, its employees note this data does not fully reflect the actual situation. Detailed and fully reliable information in this regard may be available near the end of 2004, after the audit of schools conducted by the Supreme Chamber of Control. According to data available at the time of this report's preparation, during school year 2003/2004 there were 650 schools and interscholastic sections for national and ethnic minorities in Poland.²⁷ No conclusions regarding discrimination may be drawn from this data. The fact that not all minorities take advantage of the possibility to receive instruction in their native language or to study their native language is not evidence of discrimination as such learning is organized upon the request of the minority's members²⁸.

No research has yet been conducted to diagnose discrimination of national and ethnic minorities in schooling. Such schooling has been the subject of a number of works in recent years, but they were focused only on presenting quantitative data and pointing out the main problems with which particular minorities struggle, not tracking instances of discrimination.²⁹ The only group discussed in this respect has been the Roma. Their low level of education has been indicated, the state's failure to execute the schooling obligation with respect to the Roma and the existence of "Roma classes" were primarily pointed out. For the last few years, the government and NGO's have taken various activities intended to improve Roma education. Roma classes are being successively eliminated, with about ten still remaining. Generally, it may be said the Roma schooling situation is improving, which was confirmed for the Małopolska region by research conducted in August and September 2004, by the "Harangos" Roma Educational Association [NFP/PL/0133].³⁰

NGO representatives sometimes point out that instances of discrimination against Roma students continue to occur. The Crisis Intervention Society [NFP/PL/0021] informed us of two cases of this sort (which they encountered during realisation of the *Our Own Issue* project). At the elementary school in Czarna Góra, teachers refer to Roma children as "black dogs," and one of the teachers beat them. A group of mothers intervened in this matter with the school director who promised to influence the teacher's behaviour. Further, at one of the elementary schools in Nowy Sącz, Roma classes are held in exceptionally bad conditions, in the building's basement, in a room with bars in the windows.

Sometimes, distaste for the Roma is evidenced during implementation of the Government Program for the Roma Community. For example, in Konstantynów Łódzki, a youth club was formed upon the initiative of the Roma Consulting and Information Centre Association in Poland [NFP/PL/0022]. The

²⁷ Additionally, there are 56 schools for Roma children, according to the data provided by the Ministry of National Education and Sport. However, they are schools where any kind of teaching is provided for Roma children (incl. remedial classes).

²⁸ Currently, members of the following minorities take advantage of the ability to learn in their native language or to learn the language as an additional subject in public schools: Byelorussian, Kashubian, Lithuanian, Lemki, German, Slovak and Ukrainian.

²⁹ Mikulska, A., Walentynowicz D. (2002), *Prawo do nauki osób należących do mniejszości narodowych*, [The right to education enjoyed by national minorities] [in:] Ciechanowski, J., Czyż, E., Szewczyk, E. (eds) *Prawo do nauki. Raport z monitoringu* [The right to education. Report from monitoring], Warsaw: Helsinki Foundation for Human Rights, pp. 135-160; Bureau of Research of Chancellery of the Sejm of the Republic of Poland (2003), *Problemy dyskryminacji osób należących do mniejszości narodowych i etnicznych w Polsce (polityka państwa, regulacje prawne i nastawienia społeczne)*, [Discrimination issues of persons belonging to national and ethnic minorities in Poland (state policy, legal regulations and social attitudes)].

³⁰ Mirga A., *Evaluation of educational part of the Pilot Government Program for the Roma Community in the Małopolska Voivodship*, unpublished paper presented during the side meeting of the OSCE Human Dimension Implementation Meeting in Warsaw on October 11, 2004.

assumption was that it would be an integrated youth club, but no child from outside the Roma minority applied. Despite the involvement of people engaged to work on behalf of the Roma, not a single Polish parent could be induced to send their child on a bus trip with Roma peers to the museum in Tarnów. Trip participants were not to be burdened with any costs, which seems to especially confirm the adverse attitude of that community toward integration with the Roma.

The situations listed here are not the subject of any published reports or articles. Information about them may be learned only through discussions with people working with the Roma community.

Statistics respecting immigrants for school year 2003/2004 possessed by the Ministry of National Education and Sport define the number of foreign students attending particular types schools (elementary schools, middle schools, general education secondary schools, other post-elementary schools that enable students to take matriculation exams, post-matriculation or other post-secondary schools). These statistics also indicate the percentage share of foreigners in the total number of students and establish the quantitative proportion of Resident Aliens to students from the European Union. They also set out the number of foreign students in particular voivodships. MNES data indicates the percentage of foreigners taking advantage of the Polish educational system is very low at about 0.05 per cent, which corresponds to the relatively low number of foreigners remaining in Poland with their families for an extended period of time. However, the available statistics do not allow conclusions regarding discrimination against foreigners in the realm of education to be drawn. On the contrary, they suggest immigrants face no obstacles in obtaining secondary education, as the percentage of foreigners in middle and technical schools is noticeably higher than the percentage of persons attending basic professional schools, which are treated in Poland as schools for the future unemployed.

Similar suggestions are formulated in the *Discriminatory Landscape II* report drafted by the Institute of Social Policy of the Warsaw University, which presents analogous statistics referring to school year 2002/2003.³¹ Intuitive conclusions regarding the lack of discrimination against foreigners in education seem to be confirmed by the *Immigrant Focus Groups* report prepared by the same Institute pursuant to focus group research consisting of students (including university students) and parents, from various countries residing in three different Polish cities.³² Their statements paint a picture of educational institutions that are friendly to immigrants. Not a single case was mentioned of an unwilling director of a preschool, school or university with respect to foreign student enrolment in Polish educational facilities.³³ Further, the sympathetic attitude of the teaching staff toward foreigners was indicated.³⁴ Only sporadically did foreign students mention unequal treatment in the assignment of dormitory rooms. They also indicated an impediment in the form of a lack of reliable information regarding rights and obligations inuring to and to be fulfilled by foreign students.³⁵

³¹ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of ‘Racial’ Discrimination*, p. 67, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004).

³² Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of ‘Racial’ Discrimination*, p. 47, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004).

³³ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of ‘Racial’ Discrimination*, p. 28, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004).

³⁴ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of ‘Racial’ Discrimination*, p. 29, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004).

³⁵ Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of ‘Racial’ Discrimination*, p. 29, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004).

In light of a lack of evidence of institutional discrimination against immigrants in education, to properly describe that situation, individual reports of discriminatory treatment should be considered. Though quite rarely, it happens that organisations involved in providing social and legal assistance to refugees and other migrants come in contact with complaints of discriminatory treatment in education. However, data regarding these reports is not collected in a systematic manner nor is it processed by any organisation of that sort. It should be added that activists involved in assisting foreigners (refugee centre employees, NGO activists) often suggest the people they care for do not make special efforts regarding their children's education. They treat Poland as a transit point and thus do not attach great meaning to attaining fluency in Polish nor to education in that language.

An instance of discrimination against immigrants in education reported by persons providing legal assistance for refugees and foreigners at the Helsinki Foundation for Human Rights [NFP/PL/0001] is noteworthy. During school year 2003/2004, directors of the Warsaw Municipal Education Office sent a writing to Warsaw elementary schools instructing them not to accept children with unregulated stay in Poland. In response to reservations submitted in this matter by the Mazowieckie School Superintendent Office, an attorney from HFHR informed the Warsaw Municipal Education Office in writing regarding the right to an education, which under Polish law inures to every child irrespective of the terms it is present upon Polish soil. The mistake was resolved after this intervention. Nevertheless, HFHR attorneys were subsequently asked to intervene a number of times to assist persons who had problems enrolling their children in school.

When asked regarding cases of discrimination against foreigners at schools, various NGO activists sometimes note the hostility of Polish students toward their foreign peers. They also frequently underscore, however, that it would be difficult to find the actual causes of any conflicts and definitely adjudge their xenophobic underpinnings. This is especially true since independent observers do not systematically describe these conflicts. The director of the General Education Social School District "Bednarska" remarked that sometimes immigrant children studying at her school complain of being badly treated at educational facilities they previously attended. Said school is known for its tolerant and even affirming approach to students from different cultural spheres. It seems symptomatic, however, that despite the high tuition fee it charges, immigrants are especially willing to enrol their children there. This particularly applies to the Vietnamese whose financial situation allows them such a choice.

B. Evidence for inequalities in educational performance and attainment by migrant and minority groups

Among national and ethnic minorities in Poland, it is undoubtedly the Roma whose educational performance and attainment falls below the average (this particularly applies to the Roma from the Bergitka Roma group residing in southern Poland). The government *Programme for the Roma Community in Poland* [ACT/PL/0038] turned attention to the very low educational level of the majority of Polish Roma and the widespread illiteracy among the older generation. It noted that only 70 per cent of Polish Roma children have been included in regular education and that in some communities, the decided majority of children do not fulfil their educational obligation. It also raised the issue of infrequent attendance by Roma children and the situation of girls who are candidates for wives at ages 13–16, who usually do not return to school after marriage.³⁶

Inequality in educational performance and attainment continues to be marked for the Roma. However, this situation is recently gradually improving, undoubtedly due to implementation of the government program. Research conducted by the "Harangos" Roma Educational Association [NFP/PL/0133] in the

³⁶ Poland, Ministry of Interior and Administration (2003), *Program na rzecz społeczności romskiej w Polsce* [*Programme for the Roma community in Poland*], available at: http://www.mswia.gov.pl/index_a.html, (15.10.2004)

Małopolska region indicates the main impulse for improvement was the hiring of Roma assistants. However, it was noted that the scale of change varies greatly by area. The situation looks far worse in communities where the Roma assistants were not well prepared to perform their jobs and thus could not meet the demands made of them.³⁷

A certain indicator of the Roma educational level in Poland is the number of applications filed for scholarships awarded to Roma students. By contacting Roma organizations and Roma activists from across the entire country, the Polish Association for Legal Education [NFP/PL/0134] identified only six Roma law students to which the Roma Memorial University scholarship program is directed. A scholarship contest was announced in Roma circles for Roma studying any major, implemented as part of the government *Programme for the Roma Community in Poland* [ACT/PL/0038]. As of the drafting of this report, it has received a mere thirty applications (because the deadline for filing applications passed at the beginning of October, a few applications can theoretically be still expected).

With respect to children of foreigners studying in Polish schools, there is no data indicating their inferior performance. One may only surmise that statistically refugee children and persons seeking that status receive lower marks since, as indicated above, many do not treat Poland as the country of final settlement and thus do not devote appropriate attention to education in Polish.

C. Good practices

For the last few years, the state has undertaken activities to improve Roma education. This has included training and employing Roma assistants and assistant teachers, organisation of remedial classes, equipping schools with teaching aids, paying for children's meals at schools, covering the costs of transportation and insurance, purchasing textbooks and school supplies, organizing interest circles, youth centres for the Roma or integration youth centres, school celebrations and trips with the participation of Roma children, organizing camps and day camps, paying preschool costs and financing kindergartens. These activities were mainly conducted within the *Pilot government program for the Roma community in the Małopolska Voivodship for the years 2001-2003* [ACT/PL/0039], and are currently being realised as part of the national government *Programme for the Roma Community in Poland* [ACT/PL/0038]. Local authorities, schools, NGOs as well as Roma associations joined the program. In 2004, funds were awarded to organizations and institutions from over sixty municipalities. Funds were awarded to all institutions, which applied for support of preschool education of Roma children, as it was deemed a priority.

As part of the government *Programme for the Roma Community in Poland* [ACT/PL/0038] in 2004, two scholarship grants were announced. The first was directed to Roma students ages 12–17, who are artistically gifted in singing, dance, music, artistic acrobatics or the fine arts. The procedure of selecting twelve winners is ongoing and the final results will be announced in December. It is expected all scholarship recipients will appear at the special concert in celebration of the International Roma Day in April 2005. The Ministry of Interior and Administration in cooperation with the “Gest” Association are managing the scholarship grant.

The Ministry of Interior and Administration is also offering another scholarship in cooperation with the Polish Roma Union [NFP/PL/0019] and the Polish Association for Legal Education [NFP/PL/0134]. It is to benefit students of Roma origin studying at Polish universities. Scholarship winners will be announced at the beginning of November. Forty scholarships are to be awarded, however, the filing deadline has already passed and there are fewer candidates than scholarships. It may thus be expected that all applicants meeting formal requirements will receive scholarships.

³⁷ Mirga A., *Evaluation of educational part of the Pilot Government Program for the Roma Community in the Małopolska Voivodship*, unpublished paper presented during the side meeting of the OSCE Human Dimension Implementation Meeting in Warsaw on October 11, 2004.

Activities independent of the government program are also being taken on behalf of Roma education. The Polish Association for Legal Education [NFP/PL/0134] is coordinating the Roma Memorial University scholarship program (announced by the Open Society Institute and addressed to law students of Roma and Sinti nationalities from Poland, Moldavia, Russia, Belarus and Ukraine). At the outset of school year 2004/2005, the Educational Society for Małopolska [NFP/PL/0034], using funds from the Stefan Batory Foundation [NFP/PL/0044], conducted the second edition of the program for Roma children entitled *First Step* that supports Roma education in its early years. Textbooks and school supplies were sent to 586 Roma children attending zero, second, third and fourth grade at 142 schools across all of Poland (the program was not directed to first grade students as they were covered by the government program).

Certain NGOs are getting involved in teaching foreign children Polish and providing homework assistance. This is being done by e.g. the Polish Humanitarian Organisation [NFP/PL/0058], which started a children's integration program as part of its Integration Program for refugees. That organisation has run a youth integration club for the last four years in Warsaw, where, in addition to providing assistance in assimilating textbook knowledge, children of various nationalities are encouraged to have fun and play games with their Polish peers. They are also taken to museums, cinemas and Warsaw parks. In 2004, as every year, a Children's Day was organized including additional attractions such as a campfire as well as a camp for about forty refugee children along with Polish children. An annual event is planned for St. Nicholas Day at the beginning of December, where the children receive presents. It is held in a holiday atmosphere with Polish Christmas food served while the refugees prepare traditional treats of their own.

The Maharaj Jam Saheba Digvijay Sinhji General Education Social School District "Bednarska" in Warsaw certainly deserves mention, for it is an educational facility friendly to refugees and other children subject to exclusion. Even though education in this school district is tuition-based, the directors agreed to take as many free students as there are classes (currently there are thirty-one). The beneficiaries come from e.g. children's homes, but they also include fourteen refugee children. In addition, between ten and twenty foreign children who were accepted on general terms study at the school. A program entitled *Diversity That Enriches Us* has been operating there since the start of the 2004/2005 school year. During the school year, students from particular classes research information about their fellow students' countries of origin, which will be presented at a forum in May 2005 along with films, culinary treats and customs.

Trainings for educational employees to improve their awareness of multicultural issues and preventing discrimination were held on June 7–9, 2004 as part of the PHARE 2002 *Strengthening Anti-discrimination Policies* project. The Government Plenipotentiary for the Equal Status of Women and Men [NFP/PL/0016] along with the Austrian Ludwik Boltzman Institute of Human Rights manage the program. Twenty-six educators participated with the assumption that they will train other teachers in the future.

The *Run From Exclusion. Reinforce Roma Education* project addressed to teachers is planned to last eight months. It is being realised by the Integration Association [NFP/PL/0081] in cooperation with the Roma school in Suwałki as of February 2004 as part of the PHARE *Civil Society Development* program. The project's goal is to support education of Roma children by preparing teachers and educators to identify and resolve problems occurring in the course of fulfilling the educational obligation. The first phase of activity was publication of a handbook for elementary school teachers entitled *The Roma. What every Teacher Should Know*.³⁸ The project's second component was a two-day training for school teachers and educators. These trainings were organized in four Polish cities, Suwałki, Olsztyn, Kielce and Konin, with a total of about 100 participants. The final step was organization of a national conference entitled *Friendly school – Education for the Roma*. It was held in Suwałki on October 11–12, 2004. Teachers, education officials and representatives of local authorities

³⁸ Milewski J. (2004) *Romowie. Co każdy nauczyciel wiedzieć powinien* [*The Roma. What every Teacher Should Know*], Suwałki: Stowarzyszenie Integracja.

involved with ethnic and national minorities took part in the conference. The Commissioner for Civil Rights Protection [NFP/PL/0108] was the meeting's patron.

Projects for education employees and those regarding multi-cultural education are also being carried out as part of the SOCRATES program (Comenius 2.1). An example is the two-year *SPICE* program that began in 2004, *Education at school through respect for other cultures*. Teacher training centres from England, Denmark, Spain and Slovakia are participating, with the Teacher Training Centre from Poznań taking part for Poland. The project aims to evaluate how school partnerships contribute to intercultural learning. It is also directed at developing innovative solutions by sharing good practices, identification of common problems and training elementary school directors in the realm of developing intercultural education.

One may hope multi-cultural education will expand in Poland. The government *National Program Against Racial Discrimination, Xenophobia and Related Intolerance* [ACT/PL/0178] noted the need to assure support mechanisms for building the basis for attitudes of openness toward others and respecting their "otherness" as well as the need to form social dialogue skills. The following were deemed permanent tasks: evaluation of school textbooks at all teaching levels with respect to presentation of issues of racism, including anti-Semitism and xenophobia, in accordance with world standards, introduction on the university level of issues regarding human rights and additional financing for projects involving international cooperation among children and youth regarding respect for national and cultural identity and overcoming barriers, stereotypes and prejudice. The program's second year plans to introduce provisions promoting tolerance and respect for ethnic differences to the program's fundamentals. The dissemination of principles for preventing racism and xenophobia in sport developed by UEFA was also specified (to be realised in the program's first and second years). There was also some discussion of the curricular preparation of future educators to work in a multicultural setting. Here, it was deemed necessary to appoint a consulting teacher or methodical advisor at teacher training facilities for teachers employed at schools with national and ethnic minority students covered by the education obligation (the program's second and third year), as well as to include content related to human rights education as tenets for functioning in democratic society with cultural and national differences, and to include the occurrence of racism, xenophobia and related intolerance in the teacher continuing education program (the program's third and fourth year). The entity responsible for execution of all these tasks is the Ministry of National Education and Sport.³⁹

D. State provisions for minority education

According to Polish Constitution, everyone have the right to education. Education to 18 years of age shall be compulsory⁴⁰. This means the state has an obligation to organize an education system and assure an effective control mechanism to verify children's attendance. All children are covered by the education obligation, irrespective of the status of their stay in Poland.

The Constitution of the Republic of Poland assures Polish citizens belonging to national and ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity (art. 35). The Act on the System of Education⁴¹ provides that public schools enable students to maintain their national, ethnic, linguistic and religious identity, especially in the study of language and their own history and culture.

³⁹ Poland, Government Plenipotentiary for Equal Status of Women and Men (2004) *Krajowy Program Przeciwdziałania Dyskryminacji Rasowej, Ksenofobii i Związanej z Nimi Nietolerancji 2004-2009* [*National Program Against Racial Discrimination, Xenophobia and Related Intolerance 2004-2009*], available at: http://www.rownystatus.gov.pl/ver_pl/r_przedysk.htm, (15.10.2004).

⁴⁰ Constitution of the Republic of Poland – Poland/ Dz.U. 1997/78/483 (02.04.1997).

⁴¹ Act on the System of Education in Poland /Dz. U. 1996/67/329, (07.09.1991).

Moreover, in their didactic and rearing functions, public schools ensure the maintenance of local culture and traditions (art. 13). Detailed regulations regarding education of national minorities are contained in a decree of the Minister of National Education and Sport dated December 3, 2002, regarding the conditions and manner in which schools and public facilities shall execute tasks enabling maintenance of the national, ethnic, language and religious identity of students belonging to national minorities and ethnic groups.

Students belonging to national and ethnic minorities receive essentially the same education as other children. However, in accordance with applicable law, they may learn in their native language or additionally study the minority's language, history, geography and culture. Such education is organized on a discretionary basis. It is based on a written declaration expressing the desire for that type of education filed with the educational facility's director by the child's parents, legal guardians or by the children themselves in the case of youth attending grades above the elementary level. Such a declaration is filed once and remains effective until its express revocation or the completion of education. The director of the school has a duty to organize such education if the requisite number of declarations is received; at the elementary and middle school level this must be at least 7 per one grade level, while in high school and above it is 14. When the number of willing students is lower than the required minimum, the teaching of the minority's language may be organized in the form of interdepartmental units (grouping students from various departments of the same class level) and then the number of students may not be lower than 7 in elementary and middle schools and 14 in high schools and above, or interscholastic sections (created from students at different grade levels if the number of students is between 3 and 14). When it is not possible to organize teaching of the native language at the school (e.g. due to an insufficient number of declarations or lack of an instructor), interscholastic sections are organized. When filing a declaration of the desire to learn a minority language, the form in which such studies are to be organized is described. The law provides for the following forms of minority education:

- schools and preschools in native language as the language of instruction,
- bilingual schools and preschools,
- schools with supplementary teaching of native language to members of a minority,
- interscholastic sections with supplemental teaching of the native language to members of minority.

To the extent financial resources allow, public schools and facilities may also organize additional activities for national minorities, e.g. art lessons. In organizing education for minority students, the entities managing schools and school directors cooperate with national or ethnic minority organizations.

Polish law does not specifically regulate the access of graduates from minority schools to education in Polish institutions of higher learning – they may continue their studies in the same manner as other students, however, they may not take their entrance exams to said schools in their native language.

Elements of knowledge regarding minorities are being included in teaching conducted at regular schools. Framework curricula provide for the possibility of instruction in the history and culture of ethnic and national minorities and their presence within the social life of contemporary Poland in subjects such as Polish language, history, geography, citizenship education and courses devoted to regional and European education (decree of the Minister of National Education and Sport dated February 26, 2002). Such courses are primarily held in schools located in areas populated by minorities.

Education of national and ethnic minorities is financed through the state budget. Schools which teach minorities have higher education subsidies than those which do not conduct such activity by 20 per cent per student, and in the case of schools where the number of students does not exceed 42 – by 50 per cent (decree of the Minister of National Education and Sport dated December 22, 2003, regarding the principles of allocating general educational subsidies to local government entities). School textbooks and auxiliary teaching texts for students, to the extent necessary to maintain national, ethnic, and

language identity – may receive additional financing from the state budget, from the portion thereof controlled by the minister appropriate to issues of education.

According to the art. 94a Act on the Education System⁴², foreigners subject to the compulsory education obligation take advantage of learning in public elementary and middle schools, art schools and other facilities on the same principles as citizens of Poland. Those not sufficiently familiar with Polish have the right to Polish language instruction free of charge. The local authority appropriate for the immigrant's place of residence is responsible for organizing such learning. Education on a level above middle school, including art high schools, public teachers' training facilities and other public facilities applies only to persons with a regulated legal status in Poland (migrant workers and members of their families, repatriates, refugees, persons with consent for tolerated stay, persons taking advantage of temporary protection) as well as persons to whom such benefits are awarded pursuant to international agreements. Other persons may take advantage of the above schooling for a fee or as scholarship recipients.

The Act on the Education System allows for the organization of learning a language and about the culture of a country of origin for foreigners subject to the compulsory education obligation. Socio-cultural associations and diplomatic offices organize such in cooperation with a school director and with the consent of the entity managing the school. The act does not introduce the obligation to conduct this type of activity, as it does for students belonging to national minorities who are Polish citizens, but only allows for such a possibility, leaving the final decision to entities managing the schools (in practice, these are usually local governments). At that point, the schools' only obligation is to make facilities and didactic assistance available free of charge.

E. Religious symbols in schools

Art. 53 of the Constitution of the Republic of Poland provides, "freedom of conscience and religion shall be ensured to everyone. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. The freedom to publicly express religion may be limited only by means of statute and only where such is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others." Thus, it seems the introduction of a prohibition against the display of religious symbols in schools would need to be statutorily regulated. No statute has yet been formulated regarding this issue.

It would be appropriate to note that currently, Catholic crosses hang in most public schools. Although this issue fomented discussion at the outset of the 1990s, currently, it is not the subject of public debate.

⁴² Act on the System of Education in Poland /Dz. U. 1996/67/329, (07.09.1991).

III. Legislation

A. New legal provisions and developments concerning the transposition of Directives 2000/43/EC and 2000/78/EC

Two acts came into effect in 2004 containing a portion of anti-discrimination recommendations compliant with Directives 2000/43/EC and 2000/78/EC. They are the newly passed Act on the promotion of employment and labour market institutions⁴³ and the amended Labour Code⁴⁴.

The Act on the promotion of employment and labour market institutions was passed on April 20, 2004. It contains a general prohibition against applying gender, age, disability, nationality, sexual orientation, political convictions, denomination and union membership criteria referring to several institutions provided for in the act. Thus, it is prohibited to apply the above conditions:

- in issuing pledges and permits for employment for foreigners,
- in activity conducted by an employment agency based on seeking employment for parties taking advantage of its services,
- in labour intermediacy provided free of charge by poviata and voivodship labour offices,
- in the formulation by employers of requirements with respect to employees, submitted to entities involved in labour intermediacy,
- in assuring access to professional counselling provided by poviata labour offices and voivodship labour office career information and professional planning centres,
- in direction to trainings by appropriate administrative bodies.

The act provides for a monetary fine of no less than 3,000 PLN for violation of the prohibition against discrimination for the above reasons.

The most important and broadest document with respect to discrimination issues is the Labour Code. The act introducing amendments in the Labour Code was passed on November 14, 2003, it came into the force on January 1, 2004. Thus, these laws have been applicable in Poland as of the beginning of this year and their application may be reviewed from that point forward.

Three general provisions were added to the amended Labour Code as well as practically an entire section devoted to the principle of equal treatment in employment.

In chapter II, section I of the Labour code entitled *Fundamentals of Labour Law*, the principle of equal treatment in employment has been introduced to art. 11³. Basically, it replicates the norms contained in arts. 1 and 2 of Directive 2000/78/EC as well as art. 2 of Directive 2000/43/EC. The regulation provides “[a]ny discrimination whatsoever in employment, direct or indirect, in particular due to gender, age, disability, race, religion, nationality, political conviction, union membership, ethnic origin, denomination, sexual orientation, as well as due to employment for definite or indefinite periods of time or due to full or part-time employment – is prohibited.” It is worth noting the regulation contains the words “religion” and “denomination” as bases for discrimination, terms, which from the legal point of view may be deemed identical. It would seem the word “belief” contained in the directive, which means conviction (world-view), not merely denomination, has been mistranslated. Therefore, discrimination based on employees’ world-view has not been encompassed by this part of the Labour Code regulation.

⁴³ Act on the promotion of employment and labour market institutions – Poland/Dz.U 2004/99/1001 (20.04.2004)

⁴⁴ Amendments of November 14th 2003 – Poland/ Dz.U. 2003/213/2081, (14.11.2003)

Chapter IIa in section I of the Labour Code was amended, as exemplified by the change of the title from *Equality in treatment of women and men* to *Equal treatment in employment*. Art. 18^{3a} of the Labour Code defines various forms of discrimination in paragraphs two to six. The third paragraph contains a definition of direct discrimination, while paragraph four defines indirect discrimination.

The definition of direct discrimination fails to comprise a precise translation of the definition contained in Directives 2000/43/EC and 2000/78/EC. The current Labour Code defines the concept of discrimination as follows: “Direct discrimination occurs when an employee, for one or a number of reasons described in § 1, was, is or could be treated less favourably in a comparable situation than other employees.” This means discrimination takes place not only when an employee was or is unfairly treated, but if he or she hypothetically could be treated in such manner. Such a formulation of the regulation should not be interpreted as awarding broader protection, as it is difficult to imagine any sensible application of a norm regarding hypothetical discrimination, but as a legislative error caused by a failure to understand the content of the definition in the directives, wherein the hypothetical nature of behaviour does not refer to discrimination itself, but to behaviour to which the discriminatory differentiation is being compared.⁴⁵

Pursuant to the new definition of indirect discrimination, such occurs when, due to a outwardly neutral resolution, criterion applied or activity taken, disproportions occur in the scope of employment terms to the detriment of all or a significant portion of employees belonging to a group identified due to one or several reasons described in art. 18^{3a} § 1 of the Labour Code (i.e.: gender, age, disability, race, religion, nationality, political conviction, union membership, ethnic origin, denomination, sexual orientation, employment for definite or indefinite periods of time – full or part-time employment), if these disproportions cannot be justified by objective reasons. The definition supplanted a definition, which was limited in scope to equal treatment on the basis of gender, which rather unfortunately provided that indirect discrimination occurs when there are disproportions in the scope of employment terms to the detriment of all or a significant number of employees of a single gender, if such cannot be objectively justified by reasons other than gender. Such a formulation defined discrimination in between indirect and direct discrimination (i.e. a group concept, but the outward neutrality of the regulation was not accounted for), and as such, was erroneous. Unfortunately, this does not mean the new definition may be considered a success. As indicated by I. Boruta, it varies from the definitions in Directives 2000/43/EC and 2000/78/EC, with definitions that emanate from Directive 97/80/EC from 15.12.1997 regarding the burden of proof in discrimination cases which are no longer current. This particularly applies to the ability to deem differentiation as justified, in the event it is objectively warranted by a legal goal, and the means of achieving that goal are necessary and proper (as in Directives 2000/43/EC and 2000/78/EC), and not as provided by the Polish act, simply “justified by other objective reasons.”⁴⁶

Paragraph five delineates a particular kind of discrimination i.e. harassment *tout court* as well as inducing another person to violate the principle of equal treatment in employment.

Paragraph six contains a definition of sexual harassment, also deemed to be discrimination. However, it is expressed overbroadly as any unacceptable behaviour of a sexual nature or that, which refers to employees’ gender, may be deemed as such. Thus, the concept of sexual harassment has been mixed up with the concept of harassment based on sex, constituting an instance of regular harassment.⁴⁷ Definitions of regular and sexual harassment must include the goal or effect i.e. to violate the dignity of, demean or humiliate an employee. In the definitions derived from the directives, this requirement is formulated as a conjunction of violation of dignity and creating “an intimidating, hostile, demeaning,

⁴⁵ Boruta I. (2004) “Zakaz dyskryminacji w zatrudnieniu – nowe pojęcia” [“Prohibition against discrimination in employment – new concepts”], *Monitor Prawa Pracy*, no. 2, p. 36.

⁴⁶ Boruta I. (2004) “Zakaz dyskryminacji w zatrudnieniu – nowe pojęcia” [“Prohibition against discrimination in employment – new concepts”], *Monitor Prawa Pracy*, no. 2, p. 38.

⁴⁷ Boruta I. (2004) “Zakaz dyskryminacji w zatrudnieniu – nowe pojęcia” [“Prohibition against discrimination in employment – new concepts”], *Monitor Prawa Pracy*, no. 2, p. 38.

humiliating or offensive environment.” With respect to Union norms, the Polish law defines harassment far more broadly, as an instance of the violation of dignity, which actually does not have to be related to the grounds contained in art. 18^{3a} §1 of the Labour Code.⁴⁸

Art. 18^{3b} contains enumerated examples of cases of discrimination. It may be based on differentiation of an employee’s situation by an employer, which results in, in particular: 1) refusal to initiate or terminate an employment relationship, 2) unfavourable remuneration for employment, other unfavourable employment terms or passing over for promotion or in the awarding of other employment-related benefits, 3) passing over in selection for participation in training to increase professional qualifications. This article also introduces a shift of the burden of proof in favour of the person who wants to enforce her or his right to non-discrimination. Further, in the second to third paragraphs of said article, there is a catalogue of situations, which are not considered instances of discrimination – the list includes such circumstances as differentiation of employee situations due to the type of employment or conditions of their performance on the grounds enumerated in art. 18^{3a} of the Labour Code, i.e. affirmative action.

Art. 18^{3c} of the Labour Code formulates the legal basis for equal pay for equal work or for work of identical value, where the regulation contains a definition of pay and “pay of identical value.”

The newly added chapter is concluded with: a regulation providing that damages that may be sought from an employer by an employee harmed by violation of the equal treatment rule may not be lower than minimum remuneration for employment (the previous cap on damages at six times of that remuneration was eschewed) and a regulation prohibiting “retribution” against a party availing itself of entitlements inuring thereto for violation of the equal treatment principle.

The amendment introduced into art. 9 § 4 of the Labour Code a norm, pursuant to which provisions of collective employment agreements and others based on collective agreements, regulations and statutes describing the parties’ rights and responsibilities in violation of the equal treatment principle in employment do not apply.

Currently applicable anti-discrimination legislation wholly meets requirements set in Directives 2000/78/EC and 2000/43/EC. As a result of passing the Act on promotion of employment and labour market institutions as well as amendment of the Labour Code, a series of regulations regarding employment discrimination have been introduced, though, as we have attempted to indicate above, not all of them can be considered suitable. What’s more, discrimination regulations contained in the Labour Code refer only to the employment relationship. Thus, issues related to equal treatment for the self-employed or business owners remain unregulated. Directive 2000/43/EC has been implemented only in the scope of employment and social security, while it also covers training, education, social security, healthcare, housing and access to goods and services. The Special Body has not yet been established. Currently, according to the Regulation of the Council of Ministers of June 25, 2002⁴⁹, the Government Plenipotentiary for the Equal Status of Women and Men [NFP/PL/0016] fulfils that role until a special body is established.

B. Relevant legal provisions established in 2004

Currently, legislative work is ongoing on two draft laws, which, at least partially, may be deemed to refer to preventing discrimination.

⁴⁸ Boruta I. (2004) “Zakaz dyskryminacji w zatrudnieniu – nowe pojęcia” [“Prohibition against discrimination in employment – new concepts”], *Monitor Prawa Pracy*, no. 2, p. 39.

⁴⁹ Established according to the Regulation of the Council of Ministers of June 25th 2002 – Poland/ Dz.U. 2002/96/849, (25.06.2002).

The first is the draft Act on national and ethnic minorities in the Republic of Poland, drafted by the National and Ethnic Minority Commission of the Polish Sejm [NFP/PL/0055]. Article 5 of the draft act is basically an anti-discrimination clause. It provides “[e]ach person belonging to a minority is entitled to protection from acts of discrimination, hate or violence due to her or his minority membership” and that “public authorities support realization of equal opportunity in public life as well as education and culture.” It further orders public authorities to support both activities to maintain and develop national or ethnic identity of persons belonging to minorities and policies leading to equal opportunities for them,

Generally, the entire draft act, along with the institutions of the President of the National Minority Office as the National Minority Council formed thereby, should be seen as an instrument for the protection of the position of national and ethnic minorities, and thus, one of the groups that may be subject to discrimination on the basis of race, nationality or ethnic origin. Nevertheless, work on the national and ethnic minority act has been ongoing in the Sejm for well over ten years and it has still not been passed. National minorities consider lack of such an act to be an instance of discrimination on the part of authorities.

Another draft referring to the issue of discrimination is the Senate draft act on the equal status of women and men. This draft does not refer to the province of Directives 2000/43/EC and 2000/78/EC (it covers the implementation of Directives 75/117/EEC, 76/207/EEC and 97/80/EC), it is, however, an expression of the will to establish legislation of a general nature that reinforces the principle of equality among women and men, which formally has the status of one of the basic principles underlying the distribution of rights and freedoms in the Republic of Poland. The draft also provides for appointing a new central government administrative body, the President of the Office for Equal Status of Women and Men, appropriate for women’s and men’s equality issues, i.e. opining and preparing programs and draft legal acts affecting the situation of women and men, monitoring the situation with respect to equal status, etc. (art. 11 of the draft).

With respect to legal commentary, interest has focused mainly on the issue of changes introduced in the Labour Code. This year, the following articles appeared in the leading Polish periodicals:

- Barzycka-Banaszczyk M. (2004) “Zmiany w Kodeksie pracy. Cz. I. – Zakaz dyskryminacji, mobbing, stosunek pracy, umowa o pracę, wynagrodzenie za pracę, obowiązku pracodawcy” [“Changes in the Labour Code. Part I – Prohibition against discrimination, mobbing, employment agreement, remuneration for employment, employer’s obligations”], in: *Monitor Prawniczy*, no. 6.

The article is of a descriptive nature, the issue of discrimination is treated as a subject of one of many changes introduced in the Labour Code. The basic concepts of the anti-discrimination amendments are explicated along with the reasons for their introduction (implementation of Union law). There is no critique or evaluation included.

- Boruta I. (2004) “Zakaz dyskryminacji w zatrudnieniu – nowa regulacja prawna” [“Prohibition against discrimination in employment – new legal regulations”], *Praca i Zabezpieczenie Społeczne*, no. 2.
- Boruta I. (2004) “Zakaz dyskryminacji w zatrudnieniu – nowe pojęcia” [“Prohibition against discrimination in employment – new concepts”], *Monitor Prawa Pracy*, no. 2.

Both above mentioned publications are the most interesting of the articles devoted to adaptation of Polish law to Union anti-discrimination norms. This is basically a critique of solutions implemented by Polish legislators, supported by a thorough analysis. The author ultimately concludes the new Polish legal norms that define direct and indirect discrimination, harassment and sexual harassment are of an extremely poor quality, which will constitute a barrier to their application. In the author’s opinion, implementation of union law should be deemed defective in this case. She also notes the excessive standards set by the amendments, e.g. as in the

definition of harassment, which is made identical to a violation of dignity. She finally suggests a rapid change of the improper regulations.

- Florek L. (2004) “Dostosowanie polskiego prawa pracy do prawa unijnego ze szczególnym uwzględnieniem ostatniej nowelizacji Kodeksu pracy” [“Adapting Polish labour law to Union law with particular emphasis on the latest amendment of the Labour Code”], *Monitor Prawa Pracy*, no. 1.

The article is of a descriptive nature, the issue of discrimination is treated as a subject of one of many changes introduced in the Labour Code. The basic concepts of the anti-discrimination amendments are explicated along with the reasons for their introduction (implementation of Union law). There are several remarks of a critical nature included.

- Świdorska K. (2004) [“Prohibition against discrimination in remuneration with respect to international standards”] “Zakaz dyskryminacji w wynagradzaniu w prawie polskim w odniesieniu do standardów międzynarodowych”, *Monitor Prawa Pracy*, no. 5.

The article is a legal-comparative discussion of the specific nature of non-discrimination in employment remuneration.

- Sozański J. (2004) [“The Meaning of the Community’s prohibition against discrimination for Poland”] “Znaczenie wspólnotowego zakazu dyskryminacji dla Polski”, *Przegląd Sądowy*, no. 6.

This is a broad description of European anti-discrimination norms originating from various planes – from the founding treaty to derivative law. The discussion regards non-discrimination principles in various realms of life, e.g. non-discrimination for reasons covered by the report, non-discrimination in relations among consumers, producers and the principles of free selection of the flow of goods. There is a briefing on the functioning of the non-discrimination principle in Poland – the author indicates the main qualms are raised by the effectiveness of seeking claims for violation as compared with the European system in which such claims are accessible and effective.

C. Important examples of court cases concerning racism and discrimination

No judicial decision on the subject of discrimination from 2004 has been found. It is possible the primary explanation for this state of affairs is the employees’ low awareness level of their rights in this respect as well as the novelty of the broad regulation of equal treatment in employment, and slow evaluation of matters by courts.

Authors of the opinion regarding court proceedings in Poland, expressed in *Equality, Diversity and Enlargement*, the report on measure to combat discrimination in acceding and candidate countries published by European Commission, note “discrimination cases have been brought to court extremely rarely, despite their existence in practice. This results in part from the low legal awareness of Polish people. The conviction that bringing a case to court will not bring the desired results in any case is very common, because court trials are exceedingly long and ineffective, and court fees are significant.”⁵⁰

Similar hypotheses may be found in the *Strengthening Anti-discrimination Policies* report. Point 4.2.2. finds that “[b]esides unawareness, the bad economic situation seems to be another reason for experts to believe that the amendments might not result in a big number of court cases. The unemployment

⁵⁰ European Commission (2003), *Equality, Diversity and Enlargement – Report on Measures to Combat Discrimination in Acceding and Candidate Countries*, p. 92.

rate is very high and therefore people might have the feeling that it is better to endure discrimination resulting in lower remuneration, unfavourable working conditions or unfavourable conditions for promotion than to jeopardise their current job by filing a complaint. Lack of information leaves employers unaware that the newly amended Labour Code provides for protection against victimisation. However, this provision is rather restrictive as it only protects the plaintiff against dismissal but not against any adverse treatment or consequence affecting her/his employment situation.”⁵¹

With respect to the practice of applying criminal provisions referring to race-related crimes, provisions of art. 257 of the Criminal Code provide “[w]hosoever publicly insults a population group or an individual due to its nationality, ethnicity, race, denomination or lack of denomination or violates their bodily inviolability for such reasons, is subject to imprisonment for up to three years 3.” Nevertheless, such cases are continuously being dropped by investigative bodies.⁵²

No cases concerning racist behaviour among decisions handed down by the Supreme Court have been found. It seems all the more unsettling that organization of trainings for judges regarding sensitivity to issues of racist violence was not included in the final version of the *National Program Against Racial Discrimination, Xenophobia and Related Intolerance* [ACT/PL/0178], although it was a part of the draft program.

D. Strategies and initiatives for further developing legal provisions

The Council of Ministers adopted the *National Program Against Racial Discrimination, Xenophobia and Related Intolerance 2004-2009* [ACT/PL/0178]. It is the result of Poland’s international obligations regarding realisation of recommendations contained in the summary documents of the World Conference Against Racism, Race Discrimination and Related Intolerance convened by the United Nations General Assembly (Durban, August 31 to September 7, 2001).

The task of the National Program is to implement activities to combat xenophobia and racism, including anti-Semitism and build a culture of tolerance in Polish society. The Program’s strategic assumption is to develop methods of counteracting the above pathologies and take practical steps, especially educational, but including prevention and raising social awareness, as well as conduct research to describe the scale and extent of xenophobia, racism (including anti-Semitism) in Poland and make citizens aware of their rights and obligations with respect to instances thereof.

Program realization is planned for 2004–2009, with the possibility for extension after an evaluation of its functioning and updating of goals and tasks. Polish citizens belonging to national and ethnic minorities, foreigners, including migrants and refugees as well as others who may fall victim to discrimination for ethnic or race-related reasons will be the Program’s beneficiaries.

The Program’s construction is based on the following assumptions: the first year will serve research and diagnosis of the extent of discrimination in Poland; the second and third years are allotted for educational activities – training, publications and social campaigns to raise awareness regarding the obligation and standards for observing the law as well as to introduce necessary changes in Polish

⁵¹ Liegl B. Perching B. Weyss B., *Brochure on Anti-Discrimination Legislation and Policies in Poland*, (forthcoming).

⁵² Płatek M., *An expertise aiming to identify lacunas in Polish law in the area of combating discrimination on grounds of race, ethnic origin, religion, belief and sexual orientation, with respect to Poland’s international obligations* (paper prepared for the purpose of PHARE 2002 programme – Twinning Project Poland *Strengthening Anti-discrimination Policies*), unpublished. However, recently the National Prosecutor’s Office recommended the appellate prosecutor’s offices to draw particular attention towards cases concerning acts of public insulting or incitement to hatred against national, religious or sexual minorities.

legislation. In the fourth year, it will be possible to evaluate the implemented legislative changes. The Program's overall functioning will be evaluated in its fifth year.

The Program will be realised by appropriate ministers, central government administrative bodies, central public institutions, Commissioner for Civil Rights Protection, renowned public speakers as well as by government administrative bodies in the voivodship in direct cooperation with local governments and NGOs – including public service organizations. The Program is divided into several parts (including the labour market and socio-economic situation, education and culture), and, as part of each, there are strategic and detailed goals, tasks being developed, an entity responsible for their realization as well as the date therefore are being designated.

The tasks to be performed include developing a system to collect and analyze socio-demographic data for the purpose of monitoring racism, race discrimination and xenophobia, eliminate labour regulations that directly or indirectly may lead to discrimination of migrants, refugees or national or ethnic minorities. Execution of many of the program's goals will require legislative intervention. Changes of the act on labour unions and employer organizations for the purpose of adapting them to Directive 2000/43/EC are to be carried out in 2004.

IV. Housing

A. Publicly available evidence of racism and discrimination

There is no data available regarding discrimination of national and ethnic minorities in the housing sector in 2004. What's more, no research has been performed in this realm as of yet.

Local administrative units responsible for social assistance and NGOs dealing with these groups possess information regarding the housing situation of national and ethnic minorities, migrants and refugees. Nonetheless, this data is not collected in a systematic manner nor is it processed; it is also not publicly available. Information contained in this section has been obtained through direct interviews with representatives of particular organizations.

The discussions indicate foreigners have difficulty renting housing. This mainly applies to people from the former USSR. According to information obtained from employees of the Warsaw Family Assistance Centre, it is very difficult for a refugee to find housing because, in addition to the multiplicity of information in the media regarding terrorism, apprehension toward visitors from beyond Poland's eastern borders is on the rise, while about 90 per cent of persons in the Centre's program are Chechens. Initially, attempts were made to find housing through professional real estate agencies. Unfortunately, agencies are increasingly frequently turning away the Centre's employees and refusing to take such requests. Agency employees also have problems in finding a place of residence for foreigners from the former Soviet Union and are unwilling to take on this task. It thus happens that a number of immigrant families live in a single flat. Another temporary solution used is refugees remaining at a centre for a period exceeding the three months from being granted refugee status. Generally, the centres are full and some even overcrowded.

The Białystok "Caritas" Refugee and Migrant Assistance Centre [NFP/PL/0056] notes similar observations regarding the aversion to leasing homes to people from the former Soviet Union. The municipality does not have social housing it could provide to refugees. Thus, in 2002, the Centre's employees attempted to lease flats using grants specially allocated for housing purposes. The project stalled after lengthy searches for housing bore no results. Attempts were fruitless even though "Caritas" offered to pay the rent and all fees for one year in advance.

With respect to national and ethnic minorities, only the Roma minority is affected by housing problems. As discussed in the text of the *government Programme for the Roma Community in Poland* [ACT/PL/0038], Roma housing is of a very low standard, often without facilities (toilets, bathrooms), the flats are overcrowded with cases of entire multigenerational families (at times up to ten people), living in a single room.⁵³ In 2004, certain institutions taking part in the government program investigated the Roma housing conditions within their jurisdictions. They sought to find the main housing problems of the Roma and establish a course of action to improve it; their goal was not to fight discrimination. The investigations showed the majority of the Roma living in social housing with varying conditions, though, in general, Roma homes were not of a very high standard. The worst situation in this respect may be observed in Subcarpathia [Podkarpacie].

In 2004, Commissioner for Civil Rights Protection [NFP/PL/0108] was informed of only one problem regarding Roma discrimination in housing. The instance concerns Roma from Nowa Huta, who are not able to afford housing maintenance fees since they were laid off due to restructuring of the Sędzimir Steel Mill (they reside in cooperative housing, which they moved into when working for the

⁵³ Poland, Ministry of Interior and Administration (2003), *Program na rzecz społeczności romskiej w Polsce* [*Programme for the Roma community in Poland*], available at: http://www.mswia.gov.pl/index_a.html, (15.10.2004).

conglomerate). The problem was submitted by the Association of Roma Women in Poland [NFP/PL/0026] and the Roma Association – Kraków Nowa Huta [NFP/PL/0060].

B. How are the cases of discrimination handled?

There are no legal regulations specifically regarding cases of discrimination on the basis of race and ethnic origin in housing. The Race Equality Directive has been transposed only in the realm of employment and all remaining areas, including housing, are not covered by Polish legislation.

C. Good practices

Activities directed at improving the Roma housing situation are being performed as part of the government program for the Roma community. Financial resources awarded in 2004 are to be used in about thirty municipalities to renovate flats and buildings inhabited by the Roma. Other activities are also planned, including installation of running water (Zakopane, Krościenko, Czarny Dunajec, Koszary), settlement of property ownership (Krościenko, Czarny Dunajec, Szaflary), purchase of homes (Andrychów) and home construction (Nowy Targ, Ochotnica). Currently, the majority of these undertakings are in their preliminary phases and it is impossible to evaluate if they have in fact been successful or whether and what kinds of obstacles were encountered.

Renewal and renovation of housing inhabited mostly by the Roma have been delineated as permanent activities of the *National Program Against Racial Discrimination, Xenophobia and Related Intolerance* [ACT/PL/0178].

Good practices regarding foreigners mainly include assistance in renting housing. Institutions involved in granting social and charitable assistance execute such activities. The Mazowiecki Voivod manages a project using European Refugee Fund resources entitled *Supporting Refugee Integration and Performing Social Services for Persons with Refugee Status Within the Mazowieckie Voivodship*. This project began in July 2004, and is to last one year. It is being implemented by Caritas [NFP/PL/0056]. Planned activities include improving the refugees' housing situation during the first phase of integration. The cost of leasing housing is to be paid from fund resources. Ten homes were to be turned over for use by October 1, 2004. As of the completion of this report (October 15), five flats were leased, which have not yet been occupied.

V. Racist violence and crimes

A. Publicly available evidence of racist violence and crimes

There is no publicly available evidence of racist violence and crimes committed in 2004. The Police Headquarters Office collects data regarding crime in Poland, however, as of the preparation of this report, only crimes committed in 2003 had been recorded. The relevant statistics are published on the Police Headquarters Office's website.⁵⁴

Acts defined in articles 118, 119, 256, 257, 195, and 196 of the Criminal Code⁵⁵ may be deemed racist crimes. Art. 256 provides for punishment for the public propagation of a Fascist or other totalitarian order, inducing hate on the basis of national, ethnic, race, denominational differences or due to lack of denomination, while art. 257 penalizes public insult of a population group or of particular individuals due to their ethnicity, race, denomination, or due to lack of a denomination, or violation of their bodily inviolability on the basis of such reasons. Articles 195 and 196 refer only to religion-based violence. Thus, art. 195 in the first paragraph penalizes the malicious interference with a religious act of a church or other denomination union with a regulated legal situation, while the second paragraph prohibits malicious interference with a funeral or other memorial services or functions. Further, art. 196 provides that whosoever offends the religious beliefs of others by profaning an object of religious worship or place designated for the public performance of religious rites, shall be subject to imprisonment of up to two years, parole or a fine. In 2003, there were 107 crimes reported under these articles: art. 195 § 1 – 44 crimes, art. 195 § 2 – 0, art. 196 – 32, art. 256 – 14, art. 257 – 17. There is a lack of applicable data regarding crimes falling under articles 118⁵⁶ and 119⁵⁷ on the Police Headquarters Office website. Information obtained from the Press Team of the Police Headquarters Office indicates that in 2003, there was not a single crime committed under art. 118 and three committed under art. 119. The information provided by the Police Headquarters Office is collective data, and thus offer only a fragmentary view of the situation. It does not indicate precisely what crimes they respect, against whom the crimes were committed and whether and what kind of conviction was adjudged finally.

Data made available by the Ministry of Justice in response to our request, indicates that in 2003 no crimes under art. 118 were tried while all 5 persons accused of violating art. 119 were sentenced to prison (4 persons were convicted under § 1, and one under § 2). Seven persons were tried under art. 256, of which 6 were convicted (including 3 to prison terms, 1 to parole and two were fined). Eleven people were tried under art. 257, of which 9 were convicted (including 4 to prison terms, 2 to parole with 3 being fined).

⁵⁴ Police Headquarters Office: <http://www.kgp.gov.pl/> (15.10.2004)

⁵⁵ Criminal Code Act of 1997 – Poland/ Dz.U. 1997/88/553, (06.06.1997)

⁵⁶ Article 118: 1. Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life. 2. Whoever, with the intent specified under paragraph 1, creates, for persons belonging to such a group, living conditions threatening its biological destruction, applies means aimed at preventing births within this group, or forcibly removes children from the persons constituting it, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

⁵⁷ Article 119: 1. Whoever uses violence or makes unlawful threat towards a group of persons or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of the deprivation of liberty for a term of between three months and five years. 2. The same punishment shall be imposed on anyone, who incites commission of the offence specified under paragraph 1.

The Ministry of Interior and Administration should also possess information regarding racist violence against Roma. Pursuant to agreements made at the meeting of the inter-ministerial Team National Minorities on March 1, 2000 regarding monitoring racist criminal events aimed at persons of Roma origin, the Ministry of Interior and Administration receives reports from the Police Headquarters Office regarding such cases registered by police across the entire country. Nevertheless, this information is not systematized or processed, nor is it available to the public or by way of individual request.

The government has noted the want of data with respect to the issue presented here. In the *National Program Against Racial Discrimination, Xenophobia and Related Intolerance* [ACT/PL/0178], the task planned for the first year of the program's implementation is development of a system to collect and analyze socio-demographic data for the purpose of monitoring racism, racial discrimination and xenophobia. The entity responsible for its realization is the Government Plenipotentiary for the Equal Status of Women and Men [NFP/PL/0016] in cooperation with the Ministry of Interior and Administration and the Central Statistical Office. The system is to be implemented in the program's second year. Additional tasks set for the second year include an analysis of prosecutorial practices and jurisprudence with respect to the functioning in Poland of organisations based on anti-Semitic or racial ideals, and the development of new standards for their de-legalization.

Certain NGOs are involved in collecting information on racist violence and crimes. Depending on their respective fields of interest and functioning, they focus on various instances of the violence described here.

The anti-fascist "Never Again" Association [NFP/PL/0072] maintains a *List of Incidents – the Brown Book* – a description of xenophobic acts that occurred across the entire country. It contains descriptions of various examples of xenophobia, such as aggression against members of anti-Nazi groups, the homeless, homosexuals, ethnic-based aggression, the acts of football fans, anti-European picketing, cases of devastation with racist or fascist graffiti or signs, etc. Local press articles or observations of the association's members and supporters constitute sources for the reports. The reports presented are primarily notes and do not inform whether the described events were prosecuted or made it to any court. Monitoring such issues is not one of the priorities and tasks set out by the "Never Again" Association [NFP/PL/0072]. The *List of Incidents – the Brown Book* is published in the Association's bulletin entitled *Never Again* and on the organisation's website. As of the completion of this report, the *Brown Book* for 2004 had not yet been published and only data from previous years was available (the information regarding incidents from 2004 included here was provided to us prior to official publication).

The Crisis Intervention Society [NFP/PL/0021] provides assistance and legal counselling to victims of crime and specializes in issues regarding various forms of discrimination (gender, sexual orientation, ethnic origin, etc.). It also works with the Association of Roma Women in Poland [NFP/PL/0026] and for a year has been running the *Our Own Issue* project, that aims to encourage Roma women to actively participate in civil society. Although the projects managed by the Association are not based on monitoring racist violence, due to its direct contact with the Roma community it has a certain number of reports regarding violence against that group. The information collected is intended for internal use and is not publicly available. In November 2004, the Association intends to draft a report on the *Our Own Issue* project, which shall contain a fragment regarding ethnic violence.

The "Open Republic" Association Against Anti-Semitism and Xenophobia [NFP/PL/0017] focuses on monitoring hate speech. Their recent activity is collecting recordings of Catholic "Radio Maryja" broadcasts with respect to the presence of hate speech. A selection of recordings and an article discussing this problem are available on the Association's website.⁵⁸

⁵⁸ "Open Republic" Association Against Anti-Semitism and Xenophobia, <http://or.icm.edu.pl/> (15.10.2004)

B. Anti-Semitism

No organisation in Poland systematically collects data regarding acts of violence resulting from anti-Semitism. The Jewish Social and Cultural Society in Poland is interested in this issue, however, in 2004, it only recorded hate speech directed against Jews in the press.

For purposes of this report we talked with representatives of an additional dozen or so largest Jewish organizations, asking for instances of racist violence directed against Jews or persons of Jewish origin. No one could recall any instance worth mentioning. Upon our request, a representative of the Jewish Religion Community reconnoitred Polish Jewish circles and reported two incidents. The first applied to a Jewess who was called invectives. The matter was directed to the court in Będzin and culminated on January 15, 2004 with a verdict in favour of the aggrieved. The second case was the devastation of the Jewish cemetery in Mińsk Mazowiecki, which occurred in June 2004. The courts have not yet resolved the matter, but there is some doubt as to whether the vandalism had an anti-Semitic basis.

The destruction of Jewish cultural monuments does sometimes occur. For example, a representative of the Auschwitz Jewish Centre Foundation [NFP/PL/0020] informed us of the destruction of the Jewish cemetery in Auschwitz in December 2003. “Never Again” Association [NFP/PL/0072] also reported a case of a synagogue burning, which reportedly occurred on February 25, 2004, in Dzierżoniów. The Spokesperson of the Powiate Police Command in Dzierżoniów informed us, however, that the fire had been caused by an accident. There had apparently been people drinking in the building’s attic, as evidenced by empty bottles and cigarette butts found there (the synagogue has been closed for over thirty years, and an investigation confirmed the weak security against entry by third parties). On March 12, 2004, the proceeding was discontinued due to an inability to find the perpetrators of the fire.

Other cases collected by the “Never Again” Association [NFP/PL/0072] for year 2004 also contain information regarding instances of the dissemination of anti-Semitic slogans (shouts, graffiti in public places).

The most visible violence directed against Jews is on the verbal level and is present in the media. Despite the exposure of this problem by certain intellectuals and the “Open Republic” Association Against Anti-Semitism and Xenophobia [NFP/PL/0017], complaints regarding dissemination of anti-Semitic subject matter do result in court convictions. No institution or organization possesses complete documentation of the decisions to drop proceedings or cases. Dr. Alina Cała, who is conducting research in this realm, is collecting appropriate documentation. As of the drafting of this report, data for 2004 had not yet been collected.

Steps continue to be taken to reinitiate the proceeding against the “Antyk” bookstore. The bookshop situated in the basement of the All Saints’ church in Warsaw (on the border of the former Ghetto) distributes hard-line anti-Semitic publications. The Warsaw Prosecutor’s Office conducted a preliminary investigation, to decide whether Criminal Code Act’s⁵⁹ crimes of public incitement to ethnic hatred (art. 256) or public outrage against an ethnic group (art. 257) had taken place. The prosecutor closed the investigation on June 30, 2003, as he failed to find grounds for filing a criminal case on the basis of the mentioned regulations. On October 21, 2003, appeals to the prosecutor’s decision were dismissed by the District Court. In February 2004, the state prosecutor informed it intends to apply for an additional expert opinion, which will provide the basis for whether to reopen the investigation. An expert has been applied.

⁵⁹ Criminal Code Act of 1997 – Poland/ Dz.U. 1997/88/553, (06.06.1997)

C. Islamophobia

There is no data regarding acts of violence caused by islamophobia. For purposes of this report, we spoke with representatives of Muslim organisations, asking about any cases of racist violence directed against Muslims or persons of Arab origin. We contacted the Muslim Cultural Association, Polish Tatar Association of the Republic of Poland Gdańsk Chapter, Muslim Students Society (chapters in Warsaw, Poznań and Wrocław).

Among those organisations, only the Muslim Cultural Association monitors the applicable situation but recorded no cases of note in 2004. The Polish Tatar Association informed us, “acts of violence are few, difficult to discover and not reported to the police. Someone sometimes feels insulted.” The remaining organisations are not vividly interested in the issue of racist or denominational violence, and they did not come in contact with similar incidents within the previous year.

The “Never Again” Association [NFP/PL/0072] noted one serious case of violence against a person of Arab origin in 2004, deeming it a racist crime. It was the murder of an American student that took place in Katowice in February. This case was widely publicised by the national press. The investigation in this case is ongoing, however, the racial motives of this act seem doubtful (witness reports and press articles indicate a fight over a woman as opposed to any other motives).

D. Most vulnerable groups

The most vulnerable groups/persons are those that look different from the bulk of Polish society, i.e. the Roma as well as persons of African and Asian origin. They are the most frequent victims of physical and verbal abuse (invectives, insults).

Recently, there have been reports of aggression, usually verbal, directed toward Chechens. Employees of NGOs and institutions providing assistance to migrants and refugees are coming in contact with complaints from this group. It should also be noted that immigrants from Chechnya are becoming a more frequent topic as they constitute a significant and growing percentage of migrants seeking refugee status in Poland (out of the 4,290 applications for refugee status filed between January 1 and August 31, 2004, over 80 per cent were from refugees from Chechnya).⁶⁰

It may be noteworthy that aggression toward Chechens is often not directed toward them as such but results from the erroneous evaluation of their ethnicity. For example, at the centre for refugees in Białystok, we learned of an assault on persons of this nationality but, as explained by the centre’s employee, “they were beaten because the others thought they were Gypsies.” According to information from employees of organisations providing assistance to refugees, there are also conflicts between Polish and Chechen children at schools. These are aroused by the name-calling of Chechens with a term “Ruski” which is pejorative version of the word for “Russian.”

Jews are the group against which hate speech it is most often directed (anti-Semitic graffiti, press articles).

⁶⁰ UNHCR Poland, http://www.unhcr.pl/aktualnosci.php?news=248&wid=61¤t_section=statystyki (15.10.2004)

E. Important cases concerning racist violence and crimes

The year 2004 saw no “important” cases of racist violence and crimes; “important” in the sense that such was extremely drastic or the subject of litigation. There were no racially motivated homicides.⁶¹

However, as in previous years, reports of violence against the Roma occurred again, mainly in the cities of southern Poland.

In connection with the repeated attacks on the Roma in Żywiec, the Roma People Association in Poland [NFP/PL/0046] wrote a letter requesting an explanation from the Poviato Police Command in Żywiec. In response, the police informed that attacks on the Roma are not commonplace and in the period between January and mid-March 2004, three criminal events with Roma victims took place. They were: a beating of a Roma husband and wife on February 10, 2004, criminal threats toward a Roma woman (daughter of the assaulted pair) on February 10, 2004, an assault on a Roma home on February 26, 2004 (the perpetrators broke the windows and made criminal threats toward the residents). The perpetrators of these occurrences were found and were placed under preventive supervision. The police did not find racial motives for these cases, although the explanation provided with respect to the evaluation of the motives is unsettling. It was as follows, “There is no active skinhead subculture in the city of Żywiec consequently the instances noted have typical hooligan motives and should be treated as purely incidental”.⁶²

The problem of violence against the Roma and impunity of the perpetrators is noted by the Crisis Intervention Society [NFP/PL/0021], which receives information directly from the Roma. According to the CIS, in Krośnica in the Małopolskie Voivodship, attempts at arson have been occurring repeatedly since 1997; at night, unknown perpetrators throw Molotov cocktails toward Roma homes. At least three homes have burned as a result. The police have never been able to catch the perpetrators. As further informed by the Crisis Intervention Society [NFP/PL/0021], in Nowy Sącz, groups of young men armed with dangerous weapons assault the Roma settlement and threaten the Roma with beatings. The terrified Roma are often afraid to inform the authorities regarding the attacks for fear of retribution and lack of faith in the organs of justice. The Roma describe police intervention as dilatory and ineffective. In response to the letter from HFHR requesting information regarding crimes committed against the Roma, the Municipal Police Command in Nowy Sącz responded that in 2004 it did not conduct any preparatory proceedings for crimes against the Roma residing in that poviato.⁶³

When discussing “important” events, one case is worth noting, which, as it turned out had no racial motives, but is significant for the broad response in the press it received and because it indicates a problem that may become significant in the future from the xenophobia and racism prevention point of view.

In the night of August 21 to 22 a Molotov cocktail was thrown into the centre for refugees in Moszna where about 150 Chechens reside (there were no victims). Employees of the Polish branch of UNHCR [NFP/PL/0079] and HFHR [NFP/PL/0001] that visited Moszna to establish the course of events did not find race to be the motive for the assault. The instance was a confluence of various elements,

⁶¹ To be precise, it should be noted that the national media commented on two homicides of persons with different skin colour, but were usually restrained in evaluating their racial motives. The first occurred at a disco in Katowice with the victim being an American student (February 2004). The victim of the other, committed in Warsaw, was a Nigerian man killed in his own home (September 2004). Investigations are ongoing in both cases, but the racial motives of the perpetrators are highly doubtful. In the first case, witness reports do not confirm any racial motives and in the second case, the racial underpinning is seriously weakened by the fact that the victim let the perpetrator into his home.

⁶² Letter of the Poviato Police Commander in Żywiec dated March 18, 2004 to the Chair of the Roma People Association in Poland, Ref. No.: l.dz. E-411/04.

⁶³ Letter dated 8.10.2004, Ref No.: L.dz. Nad-1623/04/5505

including prior arguments between Polish and Chechen children, which later turned into an argument and a brawl among adults. In addition, the town was buzzing with rumours (false) about the extensive benefits supposedly received by the Chechens from the state and the fabulous living conditions at the centre. Moszna residents were also unhappy because the Chechens had filled the local hotel, which previously brought profits to a local community that is not affluent. All this incited aversion among the locals toward the refugees. Representatives of UNHCR and HFHR underscore that a significant error on the part of the state was the opening of a centre without prior preparing the local community to “receive” the refugees and not explaining the reasons and principles for their being in the village. Subsequently, attempts were made to make up for this oversight. The director of the centre invited the village residents to the facility for a conciliatory meeting to prevent an escalation of the conflict. It seems the situation in the village has normalized.

F. Good practices

The Office of the Government Plenipotentiary for the Equal Status of Women and Men [NFP/PL/0016] in cooperation with the Austrian Ludwig Boltzman Institute of Human Rights as part of the PHARE 2002 *Strengthening Anti-Discrimination Policies* project organized workshop trainings for the police as well as civil and criminal judges who are themselves involved in professional education and may share the acquired knowledge during their lectures. Twenty people participated in the workshop for police officers held on May 17–19, 2004. The workshops for judges held on May 31 to June 2, 2004 garnered an audience of eighteen. The trainings aimed to make participants especially sensitive to problems of racist, nationalist or ethnic-based discrimination and violence as well as raising their awareness regarding possibilities for preventing such.

As far as hate speech is concerned, there are NGOs as well as other informal social groups working to eliminate it from the streets and Internet. On June 5, 2004 (at 8:00 a.m. – 5:00 p.m.), a number of social organisations (the Cultural and Environmental Education Centre, “Never Again” Association, “Kraków Volunteers,” “Good Hope” Association) conducted a project entitled *Painting Kraków*. It was based on painting over graffiti and symbols in Kraków that referred to fascist or racist content, spread xenophobia and hate against particular nationalities, races, religions, etc. The President of Kraków was the project’s patron.

The Viridarium Group [NFP/PL/0002] and the Helsinki Foundation for Human Rights [NFP/PL/0001] are patrons of the Interactive Working Group social campaign, the goal of which is to block Internet pages with content that is racist or calling for racial hatred. In the period between April and July 2004, about seventy pages were blocked. Currently, about 120 pages with racist content have been located. Negotiations with their administrators are ongoing.

Appendix 1

Literature

- Boruta I. (2004) "Zakaz dyskryminacji w zatrudnieniu – nowe pojęcia" ["Prohibition against discrimination in employment – new concepts"], *Monitor Prawa Pracy*, no. 2.
- Domaradzka E. Morecka Z. (2004) "Zatrudnienie obcokrajowców w polskich gospodarstwach domowych" ["Employment of foreigners in Polish Households"], *Polityka Społeczna*, no. 3.
- European Commission (2003), *Equality, Diversity and Enlargement – Report on Measures to Combat Discrimination in Acceding and Candidate Countries*.
- Golinowska S. (ed.) (2004) *Popyt na pracę cudzoziemców [Demand for the work of foreigners]*, Warsaw: Institute of Labour and Social Studies.
- Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Discriminatory Landscape I*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_eng.pdf, (15.10.2004).
- Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2003), *Immigrant Focus Groups*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP2_eng.pdf, (15.10.2004).
- Institute of Social Policy, Department of Journalism and Political Science of the Warsaw University (2004), *Discriminatory Landscape II*, report realized as a part of the EU Fifth Framework Programme Improving Human Capital, *Xenophob – The European Dilemma: Institutional Patterns and Politics of 'Racial' Discrimination*, available at: http://www.ips.uw.edu.pl/xenophob/xeno-pliki/Xeno_WP1_WP4_eng.pdf, (15.10.2004).
- Liegl B. Perching B. Weyss B., *Brochure on Anti-Discrimination Legislation and Policies in Poland*, (forthcoming).
- Mirga A., *Evaluation of educational part of the Pilot Government Program for the Roma Community in the Małopolska Voivodship*, unpublished paper presented during the side meeting of the OSCE Human Dimension Implementation Meeting in Warsaw on October 11, 2004.
- Płatek M., *An expertise aiming to identify lacunas in Polish law in the area of combating discrimination on grounds of race, ethnic origin, religion, belief and sexual orientation, with respect to Poland's international obligations* (paper prepared for the purpose of PHARE 2002 programme – Twinning Project Poland *Strengthening Anti-discrimination Policies*), unpublished.
- Poland, Government Plenipotentiary for Equal Status of Women and Men (2004) *Krajowy Program Przeciwdziałania Dyskryminacji Rasowej, Ksenofobii i Związanej z Nimi Nietolerancji 2004-2009* [National Program Against Racial Discrimination, Xenophobia and Related Intolerance 2004-2009], available at: http://www.rownystatus.gov.pl/ver_pl/r_przecedysk.htm, (15.10.2004).
- Poland, Ministry of Economy, Labour and Social Policy, Department of Labour Market, (2004) *Zbiornicze wyniki działalności służb kontroli legalności zatrudnienia w 2003 roku* [Summary Outcome of Labour Legality Services in the Year 2003], available at: <http://www.praca.gov.pl/files/20040322134110.doc?PHPSESSID=a343c4fc368f185ed03ef1ae4d337b73> (15.10.2004).
- Poland, Ministry of Interior and Administration (2003), *Program na rzecz społeczności romskiej w Polsce* [Programme for the Roma community in Poland], available at: http://www.mswia.gov.pl/index_a.html, (15.10.2004).
- Poland, Ministry of Economy and Labour (2004) *EQUAL Community Initiative Program for Poland 2004-2006*, available at: http://www.mpips.gov.pl/pliki_do_pobrania/piw_equal_1108.pdf (15.10.2004).

Poland, National and Ethnic Minorities Committee of the Sejm (2002) *Commission Project on the Law on National and Ethnic Minorities in the Republic of Poland*, available at:
<http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/223>, (15.10.2004).

Poland (2004) *Sektorowy Program Operacyjny Rozwój Zasobów Ludzkich 2004-2006* [*Sector Operational Human Resource Development Program for 2004-2006*], available at:
http://www.up.gov.pl/efs/index.php?o=sektorowy_program_operacyjny (15.10.2004).

Appendix 2

National and Ethnic Minorities in Poland

According to the most recent National Census of the Population and Housing conducted in June 2002, the Polish population totals 38,230,000 people of which 96.74 per cent declare Polish as their nationality. Others identified in the census are:

NATIONALITY	POPULATION
Germans	147, 094
Byelorussians	47, 640
Ukrainians	27,172
Roma	12,900
Russians	3,244
Lemks	5,850
Lithuanians	5,639
Kashubs	5,053
Slovaks	1,710
Jews	1,055
Armenians	262
Czechs	386

A total of 471,500 (1.23 per cent) persons declared a national affiliation other than Polish. National affiliation could not be determined for 774,900 (2.03 per cent) people.

Polish State does not recognized Silesian as national or ethnic minority. However, during the Census 173,200 people declared Silesian nationality.

According to Article 2. h. of Council Regulation (EC) No 1035/97 of 2 June 1997 the European Monitoring Centre on Racism and Xenophobia has set up and coordinates the European Racism and Xenophobia Information Network (RAXEN) composed of National Focal Points in each EU Member State in order to collect objective, reliable and comparable data and information on phenomena of racism, xenophobia and antisemitism. This report has been compiled by the National Focal Point of the European Monitoring Centre on Racism and Xenophobia (EUMC). The content of this report does not bind the EUMC and does not necessarily reflect its opinion or position. The EUMC accepts no liability whatsoever with regard to the information contained in this document. No mention of any authority, organisation, company or individual shall imply any approval or disapproval as to their standing and capability on the part of the EUMC.

Update of the Report
October – December 2004

1. Employment

On December 20, the contest awarding funds from the EQUAL Community Initiative was ultimately resolved. Of the 751 applications filed, 107 received subsidies. Nine of them are initiatives for preventing inequality and discrimination due to nationality and ethnicity in the labour market.

One project was approved out of subject A regarding migrants (Facilitating entry and re-entry into the labour markets of persons having difficulties with integration or reintegration for the purpose of promoting a labour market open to all), and two were approved concerning the Roma minority.⁶⁴

- *Intercultural Professional Adaptation Centre*. The applicant institution was the Warsaw School of Social Psychology, with the partnership of: La Strada Foundation Against Trafficking in Women, Course Education Centre at the Education and Rehabilitation Centre Joint Stock Company, Association for Marriages of Poles with Foreigners [NFP/PL/0082], Warsaw Family Assistance Centre as well as the State Centre for the Support of Professional and Continuing Education. The Mazowieckie and Pomorskie Voivodships are to be covered by the activities. Primarily immigrants, repatriates, refugees and settled non-European cultural minorities are to be the project's target groups. Planned activities include: training representatives of the target groups, negotiators, community mentors-leaders, courses and training for women, professional rehabilitation of disabled participants, as well as training professional councillors, social workers, professional education managers and employers, development of methodical materials, introduction of the institution of minority group mentor-leader and negotiator. Evaluators awarded the project 91.5 points.
- *Initiative for the Development of Roma entrepreneurship XETANES – TOGETHER*. The applying institution was the Małopolska Higher School of Economics in partnership with the Roma Cultural Centre in Tarnów [NFP/PL/0084] entrepreneurs and local government officials. The partnership is of a geographical nature (City of Tarnów and the Nowosądecki Powiate), with the Roma community being the target group. The project aims to develop a complex method for activating the Roma that includes counselling and training methodologies, conducting trainings and professional activation through supporting traditional entrepreneurship. In addition to the training component, the project includes research and monitoring activities (e.g. analysis of professions within the Roma's realm of interest and researching demand for products manufactured in the identified trades). Evaluators awarded the project 91 points.
- *Roma in the Labour Market*. The applicant institution was the Roma People Association in Poland [NFP/PL/0046] in partnership with: NGOs (including Roma minority organisations), the Nysa high school (grades 10-12) and Municipal Office. The project includes research components (diagnosis of the situation, defining barriers, recognizing key elements of required changes, including development of methodologies for educational activities) as well as training components (including training on how to establish small businesses and conduct business activity as well as training on civic citizenship and law, labour market skills and how to deal with direct and indirect discrimination). Evaluators awarded the project 85 points.

With respect to subject D (Reinforcing the social economy (third sector), in particular, for the benefit of local communities and improvement of the quality of employment positions), the project entitled *Partnership for the professional activation of the Roma using tools of the social economy* was approved for implementation. The applicant institution was the International Organization for

⁶⁴ All cited descriptions of projects were drafted pursuant to information found on the Cooperation Fund website, which is the National Support Structure (implementing institution) for the EQUAL program: <http://www.bkkk-cofund.org.pl/index.php?gr=11&act=580> (14.01.2005).

Migration (IOM) in partnership with the Polish Roma Union [NFP/PL/0019], Polish Red Cross [NFP/PL/0039] and the Association of Roma Women in Poland [NFP/PL/0026]. The partnership was formed to test the innovative idea of creating jobs for the Roma based on forming “Roma work cooperatives.” The expected result of the project is establishment of at least four model Roma cooperatives in various social environments, which would constitute the groundwork for developing a Polish model of Roma professional activation. Evaluators awarded the project 80.5 points.

In subject G (Reconciling family and career as well as the re-integration of women and men who have left the labour market through implementation of more flexible and more effective forms of labour organization and accompanying activities) the project entitled *Roma Circle of Life* was approved for implementation. The applicant institution was the Foundation of European Studies – European Studies Institute with the partnership of the Association of Roma Women in Poland [NFP/PL/0026] and the Crisis Intervention Society [NFP/PL/0021]. The main planned area of activity is to be the Małopolska area. The project aims are to prepare and implement, using the complete cooperation and involvement of Roma women, culturally adequate forms of reconciling family and professional lives (Day-care centre), which aim to make possible professional and economic activity for Roma women (A Cooperative, which aims to include a Day-care center). Evaluators awarded the project 100 points, thus obviously deeming it the best among all the competing projects.

Four projects were approved for implementation from subject matter I (Assistance in the social and professional integration of persons seeking refugee status):

- *@lterCamp* (project given an evaluation of 95 points). The Polish Red Cross [NFP/PL/0039] was the applicant institution with the partnership of the Ministry of Social Affairs, the Municipal Office of Zgierz, the Institute of Social Policy of the Warsaw University, the Polish Scouting Association and NGOs. Planned activities include an institutional component (developing an innovative service packet for persons seeking refugee status by establishing a model adaptation centre as well as educational activities directed at social policy institutional employees), a research component (diagnosis and academic forecast of migration and refugee issues) as well as a component that concerns shaping foreigner friendly attitudes in the receiving society.
- *Education for Integration – Partnership for Refugees* (80 points). The Jagiellonian University – Human Rights Centre [NFP/PL/0063] is the applicant institution, in partnership with other university law clinics, UNHCR [NFP/PL/0079], as well as the Municipal Social Assistance Centre in Krakow, Cultural and Ecological Education Centre – City of Cracow Foundation [NFP/PL/0114] and a law firm. Activities planned are legal assistance and consulting, language courses using e-learning methods, consultations with state offices and project beneficiaries to analyze needs related to integration, monitoring migration in Poland, evaluation of existing legal solutions and those from the realm of social policy as well as postulates for their improvement.
- *Social and Professional Integration of Foreigners – Learn to Understand* (65.5 points). The Polish Humanitarian Organisation [NFP/PL/0058] is the applicant institution in partnership with the Office for Repatriation and Aliens [NFP/PL/0083], the Halina Nieć Human Rights Association [NFP/PL/0070], Polish Association for Legal Education [NFP/PL/0134], IOM – International Organization for Migration and the Mazowiecki Voivodship Office. The activities will focus on the Mazovian Voivodship, with possibilities for activities – depending on the beneficiaries’ needs – within the Łódzkie, Małopolskie and Kujawsko-Pomorskie Voivodships. Partnership activities are to include training and establishment of an educational centre. A portion of the activities will focus on social education regarding the rights and responsibilities of persons seeking refugee status, developing intercultural dialogue skills among foreigners and the receiving society, organization of cooperation among all the actors.

- *Welcome – Project introducing asylum recipients to Polish society and labour market* (63 points). Caritas of the Lubelska Archdiocese [NFP/PL/0056] is the applicant institution in partnership with Profile Dialog Joint Stock Company, Caritas of the Białostocka Archdiocese [NFP/PL/0056] and the Lublin Family Assistance Centre. The partnership is of a geographical nature (Lubelskie and Podlaskie Voivodships). The program of educational activities planned for asylum recipients is to be tailored to the participants' gender, with separate programs for children and youth. Additional partnership activities are to be directed to increasing society's knowledge regarding refugees and preparation of state and local government institutions to receive new citizens.

The participants of all approved projects are required to build nation-wide partnerships by May 2005. Execution of the successive phase (Activity 2) is planned for the period between June 2005 and August 2008.

Respecting updated quantitative data available since the publication of the Annual Report 2004, in the section concerning employment, it may be added that in November 2004, the unemployment rate in Poland totalled 18.7 percent⁶⁵. Information regarding the number of work permits issued to foreigners and statistics for 2004 maintained by the Ministry of Economy and Labour were not yet available at the time of the completion of this update.

The Crisis Intervention Society [NFP/PL/0021] put up the report from the *Our Own Issue* project on their website.⁶⁶

⁶⁵ Central Statistical Office:
http://www.stat.gov.pl/dane_spol-gosp/praca_ludnosc/stopa_bezrobocia/index.htm (14.01.2005).

⁶⁶ See: <http://free.ngo.pl/crisisintervention/> (14.01.2005).

2. Education

The most important new publicly available evidence, which has become available in the period under discussion, is the report drafted by the Supreme Chamber of Control (SCC) entitled *Information on the Results of Audits of the Functioning of National and Ethnic Minority Schools*.⁶⁷ The Chamber conducted the audit in the period between February 3 and June 30, 2004, to evaluate the execution of tasks by the Minister of National Education and Sport and public schools related to enabling national and ethnic minority students to maintain and develop their national, ethnic and linguistic identity through study of the minority language, history, geography, and culture of their nation of origin, or – with respect to ethnic minorities, area of inhabitancy. In the case of MNEAS, activities regarding execution of tasks related to supporting minority student education, especially in the realm of curricula and school textbooks, including financing of such activity from public resources were audited. The audit also included issues regarding cooperation by MNEAS with state bodies, voivods, and local governments in the realization of educational projects related to the above issues as well as its oversight of voivodship superintendents respecting their pedagogical supervision of minority schools. The scope, organization and conduct of mandatory educational activities respecting the minority language and those teaching the history and geography of the country of origin, selection of curricula and school textbooks for subjects serving to maintain national, ethnic and language identity, and effectiveness of pedagogical oversight by school directors regarding execution of tasks for the benefit of minority students were investigated in schools.

The audit gave a positive evaluation of MNEAS's activity and that of particular schools respecting organization of learning for minorities, though a number of oversights were noted. Concerning MNEAS, the main issues concerned insufficient support provided to minority schools in developing curricula for teaching minority languages as well as the history and geography of the country of origin, which is particularly significant in light of the requirement to hold lessons pursuant to curricula and textbooks approved for use by the Minister of Education. In 2001-2003, the Ministry financed publication of only seven curricula for teaching minority languages, which cost a total of PLN 65.7 thousand. According to SCC estimates, at least fifty eight curricula are needed while a total of nineteen programs have been approved for use in schools since the implementation of educational reform in 1999 to the present. It was also reported that none of the schools providing teaching to minorities have a complete set of textbooks approved for scholastic use. In the SCC opinion, the Ministry did not completely exploit the organizational and financial instruments allowing for improvement in this realm. It was also noted that there was a lack of sufficient oversight of superintendents regarding their pedagogical supervision in schools providing education for minorities. No control of this sort was conducted between 2001 and 2004. MNEAS has no information available regarding the quality of the referenced schools, which would be necessary to implement activities to correct and improve the minority education system.

The main oversights respecting schools found by SCC were school directors holding minority language lessons and other activities without the legally required written declarations from students or their parents, failure to observe the mandatory number of language instruction hours, use of curricula and textbooks that had not been approved for use in schools by the relevant education minister, incomplete realization of teaching the history and geography of the country of origin or not teaching such subjects at all and insufficient pedagogic oversight provided by school directors. The issue of false information being provided in the GUS S-15 statistical form to increase the general education subsidy received by the school was also noted.

⁶⁷ Poland, Supreme Chamber of Control, Department of Science, Education and National Heritage (2004) *Informacja o wynikach kontroli funkcjonowania szkół mniejszości narodowych i etnicznych* [Information regarding the results of the control of the functioning of national and ethnic minority schools], Evid. No.: 173/2004/P/04/079/KNO, available at: http://www.nik.gov.pl/wyniki_kontroli/dokumenty/2004173.pdf (14.01.2005).

The audits by the Supreme Chamber of control did not establish the number of schools providing minority learning programs. Data from the Central Statistical Office was cited, according to which in the 2003/2004 school year, 48,797 students studied national and ethnic minority languages, i.e. 0.8 per cent of all students in Poland. Such activities were held in 607 public and private schools and 43 interscholastic centres. Activities for Roma students were held in 56 schools.

With respect to the Roma scholarships mentioned in the Annual Report 2004, forty-one Roma students were awarded scholarships of PLN 500 per month (39 annual and 2 six month scholarships) within the *Program for the Roma Community*. In addition, twenty scholarships were awarded to artistically gifted Roma students. These are one-time scholarships of PLN 2.5 thousand, which are to be designated for the purchase of study aids. The scholarships were officially awarded at an event on December 16, 2004.

Furthermore, two scholarships were granted to Polish law students of Roma origin as part of the Roma Memorial University scholarship program.

Regarding the draft versions of reports we had used to prepare the Annual Report 2004, the Crisis Intervention Society [NFP/PL/0021] put up the report from the *Our Own Issue* project on their website.⁶⁸ The report from the monitoring conducted by the Roma Educational Association "Harangos" [NFP/PL/0133] has not been published yet.

⁶⁸ See: <http://free.ngo.pl/crisisintervention/> (14.01.2005).

3. Legislation

The most important new legislative instrument considered in the final quarter of 2004, was the act on national and ethnic minorities and regional languages. As noted in the Annual Report 2004, work on this act has been ongoing for over a dozen years and the representatives of national and ethnic minorities in the past have repeatedly noted that failure to resolve this issue could be seen as a certain form of discrimination.⁶⁹ The Act on National and Ethnic Minorities and Regional Language was approved by the Parliament on January 6, 2005.

On November 4, 2004, the Sejm (lower house of Parliament) ratified an act on national and ethnic minorities and regional language.⁷⁰ The act contains definitions of national minority and ethnic minority. A national minority is defined as a group of Polish citizens, which collectively meets the following conditions: it is lower in number than the remainder of the Polish population, it differs in a significant manner from other citizens by language, culture and tradition, seeks to maintain its language, tradition and culture, is conscious of its own historic national community and is inclined to express and protect it, has resided in the Republic of Poland for at least 100 years, and identifies with the nation organized in its own state. The definition of an ethnic minority is the same as the definition of a national minority except that an ethnic minority does not identify with the nation organized in its own state. The names of minorities are enumerated in the act. As such, the Byelorussian, Czech, Lithuanian, German, Armenian, Russian, Slovak, Ukrainian and Jewish minorities were recognized as national minorities, while the Karaimi, Lemki, Roma and Tatars were deemed ethnic minorities. The act also introduced the category of a regional language, recognizing Kashubian as such and awarding the speakers of that language the same rights as those using a minority language.

The Act forms a Joint Committee of the Government and National and Ethnic Minorities consisting of government administration and national and ethnic minority representatives as well as representatives of communities using a regional language (Kashubian). The Joint Committee would serve as an advisory body to the Prime Minister. Its main tasks include opining on the realization of minority rights and needs, opining draft legislation concerning minorities, acting to prevent discrimination of minorities, opining programs serving to establish an environment favouring maintenance and development of minority cultural identity and regional language, opining on the level and principles for allocating funds from the state budget designated for supporting minority language and culture and regional language. The Joint Committee is to be chaired by an employee of the office servicing the Minister appropriate for matters of religious denominations and national and ethnic minorities. This Ministry will also be the main government body dealing with minority issues. The act also transfers to this ministry issues related to protection of minority culture, which had hitherto been the province of the Minister of Culture and National Heritage.

⁶⁹ See also: Poland, Bureau of Research of Chancellery of the Sejm of the Republic of Poland (2003), *Problemy dyskryminacji osób należących do mniejszości narodowych i etnicznych w Polsce (polityka państwa, regulacje prawne i nastawienia społeczne)*, [*Discrimination issues of persons belonging to national and ethnic minorities in Poland (state policy, legal regulations and social attitudes)*], available at: <http://biurose.sejm.gov.pl/> (14.01.2005).

⁷⁰ The text of the act is also available at: http://ks.sejm.gov.pl/proc4/ustawy/223_u.htm (14.01.2005). In Poland, the legislative process is as follows: Deputies, the Senate, President, Council of Ministers and groups of at least 100,000 citizens have the right to initiate legislation. The bill is first considered by the Sejm, which considers it in three 'readings'. Next, a bill passed by the Sejm is sent to the Senate. Within 30 days the Senate may: adopt the law un-amended, pass amendments, or reject the law in its entirety. Senate bills introducing amendments or rejecting the bill entirely are deemed passed, unless the Sejm rejects them with an absolute majority of votes with at least half the statutory number of deputies voting. Subsequently, the bill goes to the President. Within 21 days the President may sign the bill, veto it and remand it back to the Sejm for consideration, or petition the Constitutional Tribunal with a request to verify the bill's constitutionality. The decision issued by the Constitutional Tribunal is binding – should the Tribunal deem the bill to be constitutional, the President must sign it, if it is unconstitutional, he must reject signing the bill.

The Act on national and ethnic minorities and regional language basically repeats regulations referencing minorities currently contained in other laws and provisions of the Framework Convention formulating minority rights and establishing general principles concerning dealing with minorities. This includes the right of each individual to decide whether to be treated as a person belonging to minority, prohibition against measures to assimilate members of a minority against their will or those intending to alter the proportions of national or ethnic minorities in areas they inhabit. The Act further introduces a prohibition against discrimination arising from membership in a minority and obligates public authorities to take certain steps to support intercultural dialogue, protect persons subjected to discrimination, hostility or violence and support complete and actual equality in economic, social, political and cultural life among persons belonging to minorities and members of the majority.

The Act contains a series of articles regarding the use of minority language, guaranteeing the right to the use and spell names and surnames in accordance with the rules of the minority language and to the free use of the minority language in private and public life, dissemination and exchange of information in the minority language, publish information of a private nature in the minority language and learn in and study of the minority language.

The Act provides for the possibility of using additional names of towns, physical and geographical points and streets in the minority language next those established in Polish and defines a detailed procedure for establishing these names. A material limitation in the application of this procedure is the requirement that the number of minority residents in a county in which the additional names were to be used constitute no less than half of the county's population.

The act adopted by the Sejm has engendered quite a bit of controversy. The controversy concerned, among other, the definition of national and ethnic minority⁷¹ and especially the deletion of articles guaranteeing the use of a minority language as an auxiliary language in government offices. For example, the Legislative Office of the Chancellery of the Senate was quite critical of the Act passed by the Sejm: "The fundamental defect of the act in the version passed by the Sejm is lack of consistency of solutions related to the auxiliary language (...), it should be noted that there are no solutions related to auxiliary language in addition to a limited ability to introduce additional names of towns, physical and geographic locations and streets in minority languages (due to the fact they may be introduced in counties where the minority constitutes at least half of the population) makes this act merely a shell actually containing only definitions and declarations."⁷²

Pursuant to the Polish legislative process, the Act passed by the Sejm went to the Senate (the Upper House of Parliament). On December 3, 2004, the Senate passed an act introducing 34 amendments to the act.⁷³ Amendments concerning language rights are among the most important of those. The ability to use the minority language in local government offices as an auxiliary language was introduced. An auxiliary language may be used in counties where the minority is at least 20 per cent of the total county population. As a result, introducing a minority language as an auxiliary language would be possible in fifty one counties. The threshold defining the minority population percentage required to introduce additional names of towns, physical or geographical points or streets in the language of a given minority was lowered from 50 per cent to 20 per cent. What is more, nomenclature in a minority

⁷¹ E.g. a letter from the representatives of three minority organizations (Polish Roma Association, Polish Tatars Union, Jewish Religion Community) to the Marshall of the Senate and Senators dated November 6, 2004: "In numerous places, this Act does not fulfil the hopes I had invested in it over the years (...). We have many reservations with respect to the Act. One of them disqualifies the adopted text to a large extent. Pursuant to this act, the Polish state rejects the right of minorities "not identifying with nations organized in their own state" to define themselves as a nation. For us, and likely many others, this is deeply humiliating".

⁷² Poland, Chancellery of the Senate Legislative Office (Nov. 17, 2004), *Opinia do ustawy o mniejszościach narodowych i etnicznych oraz o języku regionalnym* [Opinion to the act on national and ethnic minorities and regional language].

⁷³ Resolution of the Senate of the Republic of Poland dated December 3, 2004, regarding the act on national and ethnic minorities and regional language. Available at: [http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruk/3536/\\$file/3536.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruk/3536/$file/3536.pdf) (14.01.2005).

language could also be introduced in counties not meeting the 20 per cent minority population threshold, under the condition that over half the residents of a given locality taking part in the consultations back such an idea. The Senate version defines a regional language as one traditionally used within the territory of a given state or by its citizens, which constitute a group numerically smaller than the remainder of said state's populace. This language is to differ from an official language. Dialects of the official language or the language of migrants are not deemed regional languages.

An important change introduced by the Senate concerns the manner of awarding subsidies from the state budget for activity related to the protection and propagation of minority tradition, culture, religion and language. Subsidies for some activity supporting minority culture, tradition and language may be awarded outside an open tender of offers.

On December 8, 2004, the Marshall of the Sejm directed the Act passed by the Senate to three Sejm committees: the Administration and Internal Affairs Committee, Education, Science and Youth Committee as well as the National and Ethnic Minority Committee. At a meeting on December 16, 2004, these committees evaluated the amendments submitted by the Senate and submitted a request to the Sejm for the majority to be approved.⁷⁴ The Act was approved by the Parliament on January 6, 2005.

Regarding new publications devoted to legal analysis, in the final quarter of 2004 a book prepared as part of Twinning Project *Strengthening Anti-discrimination Policies* was edited.⁷⁵

4. Housing

There is no new publicly available evidence regarding racism and discrimination in housing. In the Annual Report 2004, we wrote of the *Supporting Refugee Integration and Performing Social Services for Persons with Refugee Status Within the Mazowieckie Voivodship* project run by the Mazowiecki Voivod and Caritas [NFP/PL/0056]. This project's activities include improving the refugees' housing situation during the first phase of integration. The cost of leasing housing is to be paid from fund resources. Ten flats have been leased as of the end of 2004, which are occupied by multi-child families from Chechnya and Somalia.

5. Racist violence and crime

No new publicly available works regarding racist violence and crimes were made published in the period covered by this rapid response report. There were, however, reports published of which we had used the draft versions to prepare the Annual Report 2004. As such, on November 9, on the anniversary of Kristallnacht – the International Day Against Fascism and Anti-Semitism, the “Never Again” Association [NFP/PL/0072] published the *List of Incidents – the Brown Book* on its website,

⁷⁴ Report of the Administration and Internal Affairs Committee, Education, Science and Youth Committee as well as the National and Ethnic Minority Committee, *O stanowisku Senatu RP w sprawie ustawy o mniejszościach narodowych i etnicznych oraz o języku regionalnym (druk nr 3536)* [On the position of the Polish Senate regarding the act on national and ethnic minorities and regional language (version No. 3536)]. Available at: [http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruk/3584/\\$file/3584.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruk/3584/$file/3584.pdf) (14.01.2005).

⁷⁵ Liegl Barbara, Perchinig Bernhard, Weyss Birgit (2004) *Prawne i instytucjonalne aspekty przeciwdziałania dyskryminacji w Polsce* [Legal and institutional aspects of preventing discrimination in Poland], Warsaw-Vienna: Government Plenipotentiary for Equal Status of Women and Men and Ludwig Boltzmann Institut für Menschenrechte.

covering the first half of 2004 (January 1 – June 30).⁷⁶ In November, the Crisis Intervention Society [NFP/PL/0021] put up the report from the *Our Own Issue* project on their website.⁷⁷

There continue to be no official statistics for 2004 concerning crimes and completed court cases (the former are being prepared for internet publication by the Police Headquarters Office, the latter are being readied by the Ministry of Justice). However, what seems to harbour a potential change for the near future, in the Ministry of Interior and Administration set up the Monitoring Team on Racism and Xenophobia, in October 2004. The main tasks of the team are: setting up a data collection focused on discrimination, racism, xenophobia and anti-semitism in cooperation with the Ministry of Justice, Police and NGO; drawing recommendations for the Government; set down guidelines of the National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance.

No final judgments have been handed down in the murders about which we wrote in footnote 61 of the Annual Report 2004, therefore the racial motivation of these acts could not yet be confirmed.

According to information from organisations grouping minority representatives, two serious acts of racially motivated violence occurred during the period under discussion. Both were directed against the Roma.

According to information from the Roma Consulting and Information Center [NFP/PL/0022], at the outset of December, there was an assault on a pair of young Roma in Konstanyń Łódzki. Since the perpetrators were not caught the case was dropped by the police.

On December 3, 2004, a 40 year-old Roma man disappeared in the town of Sławno. After three weeks, his body was found in a river. According to information from the Polish Roma Union [NFP/PL/0019], witnesses told the victim's family that on the day of his disappearance they saw him in a park with unidentified parties pulling on him and threatening him with death, saying "let's finally kill this Gypsy". However, no witnesses corroborated this information during hearings at the police station. The prosecutor's investigation in this matter began recently, thus at this point it is difficult to ascertain the motives for murder.

Moreover, persons from Muslim associations have noted the pervasive dislike toward them and occasional verbal taunts (they informed us about this during telephone interviews we conducted in the first half of January 2005). Similarly, the Jewish Historical Institute [NFP/PL/0042] receives letters with anti-Semitic content, e.g. "Killing Jews is not a sin". They are anonymous, consequently the Institute does not take any investigative steps and only archives the arriving letters.

In November 2004, the "Open Republic" Association Against Anti-Semitism and Xenophobia [NFP/PL/0017] began implementation of a project entitled *Law Against Hate*. The project's goal is to investigate whether, to what extent and why legal and justice institutions in Poland do not effectively prevent acts of racial, ethnic and religious hate, and if it is the law that is to blame or rather its ineffective application. The project will prepare documentation and analyze criminal cases under arts. 256 and 257 of the Criminal Code ending in judgments in 1999-2003. A report is to be drafted from this analysis containing, in addition to a summary of the research, suggested activities to improve effectiveness in the administration of justice. This report is to be published and provided to appropriate authorities and institutions (especially the courts and prosecutors' offices). The project is being implemented in cooperation with appropriately trained law students (who collect and analyze documents) and the Polish Association for Legal Education [NFP/PL/0134] (which is preparing the report). The report is to be completed in October 2005.

The Polish police have undertaken new initiatives in the final quarter of 2004. The National Chief of Police ordered all voivodship chiefs of police to appoint human rights plenipotentiaries within their

⁷⁶ See: <http://free.ngo.pl/nw/> (14.01.2005).

⁷⁷ See: <http://free.ngo.pl/crisisintervention/> (14.01.2005).

precincts. The plenipotentiaries have been active since December 2004. A more detailed scope of their responsibilities and a timetable for work will be established during a working meeting in January 2005. The agenda for that meeting provides for issues related to racism.

In the latter half of 2004, activities were also initiated to introduce issues regarding strengthening anti-discrimination policies into police training curricula (including issues of racism and xenophobia as well as related crimes). These activities are a result of a training workshop for persons that professionally deal with conducting police training, organized as part of the Twinning Project Poland PHARE 2002 *Strengthening Anti-discrimination Policies*, run by the Office of the Government Plenipotentiary for the Equal Status of Women and Men [NFP/PL/0016] in cooperation with the Austrian Ludwig Boltzmann Institute of Human Rights. The First Deputy of the National Chief of Police has approved an appropriate timetable of educational activities for 2005-2006. Pursuant to the timetable, in October 2004, a one-day training was developed, to be conducted in 2005, as part of professional training for field police officers. Its subject matter and methods (lecture, situational exercises) correspond to those in the training performed as part of the Twinning Project. The training will be conducted by persons responsible for training at respective Voivodship Police Headquarters, which have themselves been trained as part of the Twinning Project or later, as part of additional workshops held in October 2004 in the police academy in Słupsk by participants of the initial training.

Moreover, since the autumn 2004 work has been ongoing to introduce content that informs the police about how to deal with racist crime and violence, racist offenders and victims of racism into the police basic training curriculum. According to information obtained in December 2004 during the interview at the Curriculum and Examination Department of the Cabinet Office of the National Chief of Police, at the outset of 2005, by a decision of the National Chief of Police, a team will be appointed to develop a new curriculum of the entire basic training course. As of mid-2005, police officers are to be accepted to police academies pursuant to the criteria and trained using the new curriculum developed by the team. The detailed scope of anti-discrimination issues to be covered by the curriculum will be established in the first half of 2005 in the course of the team's work.

6. Conclusions

The above supplementary information does not change conclusions of the Annual Report 2004.