



# Responding to racism in Poland



europaean network against racism  
europejska sieć przeciwko rasizmowi

## OVERVIEW OF RACISM IN A NATIONAL CONTEXT

The issue of racism is a relatively new topic for both Polish policy and public discourse. During the communist era, the idea of Poland as a uni-national state was pervasive. After the collapse of communism in 1989, the prime minister of the first democratic government declared that Poland would be the homeland for Poles and minorities as well. Many minority organisations have been established - at present, about 150 organisations are active. Some activities of the recognised minorities are supported by public sources.

In the beginning of the 1990s, work began on the draft of the Act on National and Ethnic Minorities. Due to controversies regarding linguistic rights, work on this act lasted about fifteen years. It was finally adopted in January 2005. The process of democratisation seems to have had a good impact on the situation of minorities in general; however, the conditions of one of the groups, Roma, has broken down as a result of the economic transition process. Roma also experienced racial violence and discrimination. To improve their situation, two governmental programmes for the Roma Community have been established. The first pilot programme was implemented in 2000-2003; the second, which is to operate on a national level, is currently being implemented. Apart from national and ethnic minorities there are also some other groups who can become victims of racial discrimination: migrants or foreigners. These people, however, are not covered by the law on Ethnic and National Minorities.

Thanks to its international obligations, in recent years Poland started its implementation of the provisions of EU anti-discrimination directives and has adopted the National Programme Against Racial Discrimination, Xenophobia and Related Intolerance 2004-2009. This Programme applies to all groups that are victims of racism.

## KEY ACTIVITIES OF THE POLISH NATIONAL COORDINATION

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At present, the Polish National Coordination has not been formally established. On February 8, 2005 the delegation from the Secretariat and the Board of ENAR met with the representatives of Polish non-governmental organisations addressing the issues of racism, xenophobia, minorities and migrants. Among others, the following organisations were present: the Helsinki Foundation for Human Rights, Amnesty International – Poland, the Viridarium Group, the Christian Culture Foundation of “Znak,” the Never Again Association, the Polish Roma Union, and the One World Association. The organisations declared their will to cooperate and their interest in building a Polish National Coordination. Nevertheless, it has not yet been decided which of the organisations will lead the Polish branch of ENAR. Until now, the future National Coordination has focused on exchanging news and information and taking part in the activities undertaken by ENAR, such as seminars, conferences, or General Assembly.

## OVERVIEW OF ENAR

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ENAR promotes the cause of anti-racism and equal treatment for ethnic minorities and non-EU nationals residing in the European Union.

ENAR is a network of European NGOs working to combat racism in all EU Member States. The NGOs have formed National Coordinations (NCs), which constitute the membership of ENAR and include ethnic minorities, immigrants' associations, information centres, advocacy groups, trade unions, faith based organisations and many others. Democratically elected representatives of each NC attend the Network's meetings where they are consulted on policy and statutory issues. One of the representatives of each NC should belong to an ethnic minority.

ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.

## THE NATIONAL SITUATION – WHO IS EXPERIENCING RACISM

Poland is relatively uniform ethnically. According to the national census held in 2002, the Polish population is 38,230,000 people. Polish nationality is declared by 36,983,700 persons, making up 96.74 per cent of the population. The number of foreigners that are permanent residents of the Republic of Poland amounts to approximately 40,200. 1.23 per cent of the population are recognised as national or ethnic minorities.

Open racism is not common in Poland. Although instances of racist violence and crimes do occur, racist violence is not drastic and or commonplace. 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. The most vulnerable groups are those that look different from the bulk of Polish society, e.g. the Roma, as well as persons of dark skin colour. They are the most frequent victims of physical and verbal abuse (invectives, insults). Jews are the group against which hate speech it is most often directed.

Institutions involved in the protection of civil rights rarely receive complaints of discrimination from minority representatives. For example, the Ombudsman's office annually receives about 30 such complaints. Minorities chiefly complain of difficulties in gaining access to the media, teaching their language and financing cultural activities. The Roma constitute an exception in this realm. The situation of this minority or at least a portion thereof, is significantly inferior to the remainder of society. The Roma complain of refusals to provide them with financial benefits by social assistance, unequal treatment in access to social assistance, lack of tolerance by local authorities and prejudice by employers.

## POLITICAL REALITY – NATIONAL LAWS AGAINST RACISM

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The Polish Constitution prohibits discrimination in political, social or economic life for any reason whatsoever and also ensures protection of the rights of national and ethnic minorities. The future development of these general provisions are contained in several lesser acts, like the Act on National and Ethnic Minorities and Regional Language, The Labour Code Act, the Law on Employment and Countering Unemployment. The criminal code has individual provisions for crimes committed on the basis of race, nationality, ethnicity or denomination (genocide, illegal violence or threats, desecration, incitement to hate, or propagation of a fascist or other totalitarian regime). Applicable regulations do not establish a framework for institutional discrimination on the basis of ethnicity.

Nonetheless, current anti-discrimination legislation does not fully comply with 2000/43/EC, implemented only in the realm of employment, while it also covers various areas of life. The Special Body has not been established yet. Until 2005, the Government Plenipotentiary for the Equal Status of Women and Men fulfilled the function of the Special Body. However, in November 2005 this office was closed. The Act on National and Ethnic Minorities introduces prohibition against discrimination and obliges public authorities to take certain steps to support intercultural dialogue, to protect persons subjected to discrimination, hostility or violence and to support complete and actual equality in economic, social, political and cultural life among persons belonging to minorities and members of the majority. It must be noted, however, that the above regulations relate only to national and ethnic minorities defined in the act, and not to all people subjected to discrimination for ethnic or racial reasons.

## IMPORTANCE OF THE CIVIL SOCIETY INFRASTRUCTURE

Racism and racial discrimination are relatively new issues in Poland and they are almost absent from the public discourse. There are no cases concerning ethnic discrimination being reviewed by Polish courts. There are various contributing factors to this situation, such as low familiarity with applicable anti discrimination legislation or unskilled application of such in practice. What is more, some victims of racial discrimination do not speak Polish and/or do not know Polish law and consequently do not know how to proceed in the cases of discrimination. Apart from this, many of the victims of racial discrimination fail to seek their rights or compensation due to their lack of faith in possible success. The same is true for the victims of racial violence, who very often refuse to inform the police about racist cases.

Due to these facts it is important to build a civil society infrastructure that would be capable of dealing with the issue of racism comprehensively. This infrastructure should include a range of organisations: those which provide various kind of assistance for the victims, those which focus on promotion of knowledge regarding anti-discrimination legislation, and those who deal with multicultural education and watch-dog type organizations which can observe the phenomena of racism and inform about the main developments in this area.

## RESPONDING TO RACISM: STRATEGIC LITIGATION

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Many anti-racist NGOs have not traditionally engaged in legal processes, often this is for the simple reason that there was little law for them to refer to. However the adoption of the EU Race Directive (see section 'EU and anti-racism') and the development of national law, means that now more than ever litigation has the potential to lead to real change for those who are vulnerable to racism and discrimination.

As anti-discrimination is a relatively new field of law, NGOs have a role to play in raising awareness regarding its potential. Consequently the strategic litigation has come to the fore as a useful advocacy technique. NGOs can both directly engage in strategic litigation and support others to do so by gathering data, assessing victims and engaging in advocacy.

“Strategic or impact litigation uses the court system to attempt to create broad social change”

The primary focus of strategic litigation is law or policy change rather than redress for an individual, though these two objectives are not mutually exclusive. Strategic litigation intends to reach beyond an individual case or victim, to create a context of enhanced protection for everyone who is vulnerable to discrimination. By changing law or setting precedents an individual case can have a ripple effect leading to change on a much broader level.

The concept of strategic litigation encompasses the selection of cases, case planning and management, as well as ensuring that favourable outcomes are implemented.

Not every NGO has the mandate or skills to engage in litigation, nor will litigation necessarily be the right strategy in many cases. Nonetheless, it is essential for all anti-racism actors to recognise the importance of strategic litigation as a tool for generating change.

## SERVICES AVAILABLE FOR THE VICTIMS OF RACIAL DISCRIMINATION

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The Commissioner for Civil Rights Protection is the central institution whose jurisdiction embraces issues related to the observance of human and civil rights, and thus also issues of racial discrimination. The Commissioner has a series of options available to intervene in violations of those rights. The options include initiating proceedings in civil cases, requesting that appropriate bodies initiate administrative proceedings as well as the power to file complaints with the administrative court. The other central body which assists the victims of racial discrimination is the Monitoring Team on Racism and Xenophobia set up in the Ministry of Interior and Administration. Its activities consist mainly of intervening in the cases of discrimination. These two institutions provide assistance to victims of discrimination experienced in both the private and public sector.

The individuals who experience racist crime or racist violence should report such cases to the police who are obliged to provide proper aid. However, there are no systems or programmes to support victims of racial violence within the police structure.

Service for the victims of racial discrimination is also offered by some NGOs. Polish law provides for the possibility of participation by social organisations in administrative and court proceedings. However, in Poland there are currently no organisations specialising in representing victims of racial discrimination in court and administrative matters. Legal aid programmes providing assistance to victims of national or ethnic discrimination operate as part of certain NGOs with broad mandates, such as human rights or humanitarian aid. Moreover, some minority associations provide various kind of assistance to persons of a given minority.

## WHY A EUROPEAN PERSPECTIVE IS CRUCIAL EU AND ANTI-RACISM.

National NGOs working on anti-racism are already seriously overburdened in their work to confront racism and discrimination. Why then should they also be concerned with what is going on in other European countries, and in the institutions of the European Union itself?

Developing an understanding of racism in Europe is essential for two key reasons. Firstly, to promote learning and knowledge about what racism is and how to combat it and secondly to generate common tools across the European Union to combat racism. Experience over the last ten years has demonstrated that national governments can be convinced to take action at a European level, where they may not have been prepared to move forward alone.

Racism has a distinctly European dynamic. Europe's colonial history underlines its role in fostering both historical and contemporary forms of racism; and the 20th century does not cast a positive light on the European legacy. Despite this long history Europe began to take racism seriously relatively recently. Europe has a responsibility both to the people living within its borders, as well as internationally to take a leading role in promoting a vision of a world free from racism.

In 1997, Article 13 of the Amsterdam Treaty gave the European Union a legal base on which to develop 'appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. Using these powers the European Union adopted the Race Equality Directive in June 2000 (and later that year the Employment Equality Directive).

While the Race Directive was due to be fully implemented by July 2003, at the beginning of 2006 some Member States have failed to implement it. This reality raises questions about the continuing commitment of EU Member States to combat racism and discrimination. However

the Directive does have direct effect, which means that individuals can assert it before national courts, even where it has not been implemented.

The Race Directive gives protection against discrimination in employment and access to a range of good and services, including social protection, health, social security and education. It puts forward a number of important definitions including: direct and indirect discrimination, harassment, and victimisation. Other significant aspects of the Directive are that it allows for positive action measures, the sharing of the burden of proof, and the establishment of equality bodies.

The principles enshrined in the Race Directive need to become core elements of anti-discrimination law and practice across the European Union. Strategic litigation is a tool to ensure that this happens. To this end, it expressly allows for NGOs to engage in proceedings in support of or on behalf of victims.

While Article 13 of the Amsterdam Treaty provided the context for developments in the field of anti-discrimination, Article 29 of the Treaty on the European Union included reference to preventing and combating racism. While the European Commission proposed a Framework Decision against racism and xenophobia (racism as a crime) in 2001, developments in this policy area have been disappointing; the Council has failed to adopt the Framework Decision. In addition the European Union has competence in other policy areas that either directly or indirectly impact on the fight against racism, including: social inclusion, migration and asylum, and education.

The European Union is also involved in a range of other activities, including awareness raising (through the 'For Diversity. Against Discrimination' campaign) and funding of anti-racism projects. In 1997 the EU Monitoring Centre on Racism and Xenophobia (EUMC) was established. While the Centre is likely to be expanded to become a Fundamental Rights Agency in 2007, it will continue to focus on the problem of racism in Europe.

## KEY LINKS AND SOURCES OF INFORMATION AT NATIONAL LEVEL

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Monitoring Team on Racism and Xenophobia: [www.mswia.gov.pl/index.php?dzial=99](http://www.mswia.gov.pl/index.php?dzial=99)

National Action Plan for Counteracting Racial Discrimination, Xenophobia and Related Intolerance 2004 – 2009: [www.rownystatus.gov.pl/pl/index.php?m=artykul&art=345](http://www.rownystatus.gov.pl/pl/index.php?m=artykul&art=345)

Campaign “For Diversity. Against Discrimination”:

[www.stop-discrimination.info/2187.0.html](http://www.stop-discrimination.info/2187.0.html)

Government Plenipotentiary for Equal Status of Women and Men:

[www.rownystatus.gov.pl/pl/index.php?m=dzial&id=13](http://www.rownystatus.gov.pl/pl/index.php?m=dzial&id=13)

Note: The Office of the Plenipotentiary does not exist anymore, however, its website which contains information and documents regarding racist discrimination is still available

## KEY LINKS AND SOURCES OF INFORMATION AT EUROPEAN LEVEL

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EU Monitoring Centre on Racism and Xenophobia: [www.eumc.eu.int](http://www.eumc.eu.int)

European Commission - anti-discrimination and relations with civil society:

[www.europa.eu.int/comm/employment\\_social/fundamental\\_rights/index\\_en.htm](http://www.europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm)

European Network Against Racism (ENAR): [www.enar-eu.org](http://www.enar-eu.org)

European Roma Information Office: [www.erionet.org](http://www.erionet.org)

European Union: [www.europa.eu.int](http://www.europa.eu.int)

‘For Diversity. Against Discrimination’: [www.stop-discrimination.info](http://www.stop-discrimination.info)

Strategic Litigation of Race Discrimination in Europe: from Principles to Practice:

[www.migpolgroup.com/documents/2498.html](http://www.migpolgroup.com/documents/2498.html)

Strategies on Litigation Tackling Discrimination in EU Countries: [www.solid-eu.org](http://www.solid-eu.org)

This leaflet was prepared on behalf of ENAR in Poland and by the ENAR European Secretariat. The leaflet may be downloaded from the following link: [http://www.enar-eu.org/en/publication/national\\_leaflets/](http://www.enar-eu.org/en/publication/national_leaflets/)

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