



TARGETED BY HATE, FORGOTTEN BY LAW

LACK OF A COHERENT RESPONSE
TO HATE CRIMES IN POLAND

AMNESTY
INTERNATIONAL



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Cover photo: A mural painted by Dariusz, a street artist and human rights defender, featuring middle-class citizens of Żywiec (in south-central Poland) wearing traditional clothes against the backdrop of a rainbow. The wall painting had been vandalized several times. On 13 December 2014, Dariusz was targeted with homophobic violence by two passers-by in front of the mural.

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EXECUTIVE SUMMARY

Every year, hundreds of people in Poland become the victims of beatings, harassment and other crimes simply because of their identity or their belonging to a certain minority group. Such hate crimes are a form of discrimination and a criminal manifestation of it. Hate crimes also have a pernicious and long-lasting impact on victims and communities and require a coherent and thorough response from policy makers, law enforcement officials and the criminal justice system.

Grażyna and her family were the target of a violent attack in the city of Białystok because of the ethnicity of her son-in-law, Naresh, who was an Indian national. She told Amnesty International:

“In September 2013, after the arson attack, one of my daughters moved to another city as she did not feel safe here... she is not ready to come back yet. Ewa, my other daughter, and her husband Naresh, moved to London afterwards... They would have liked to live here but that proved to be really hard... I still do not feel safe myself today, two years after the attack.”¹

While making some important progress in addressing hate crimes against some groups, Poland has entirely left behind others, creating a two-tier system and a significant protection gap in law and in practice. Polish criminal law specifically provides for the investigation and prosecution of hate crimes motivated by race, ethnicity, nationality, religion and political affiliation. But it does not establish that age, disability, gender, gender identity, sexual orientation and social or economic status are also grounds to investigate and prosecute hate crime.

Łukasz is a drag-queen performer and LGBTI activist in Szczecin, the city where P., a young gay student, was murdered in January 2014. Łukasz explained:

“After the murder, LGBTI people started thinking about their own safety, especially because P. was killed in the city centre... this could have happened to anyone... in June 2014, a new gay club opened in town and we received many queries about security because people were still traumatized.”²

Under international and European human rights law, age, disability, gender, gender identity, sexual orientation and social or economic status are protected characteristics. In other words, discrimination on these grounds is prohibited, just as it is on grounds of race, ethnicity, religion and nationality. The law should treat all crimes motivated by protected characteristics in a consistent manner. The fact that Polish law treats hate crimes against certain groups differently is in itself discriminatory, given that there are no objective reasons for doing so.

This gap in the legislation has many consequences. Poland has established institutional mechanisms to address racist and xenophobic violence as well as incitement to racial and xenophobic hatred, including specialized prosecutors and coordinators within the police. While there

¹ Interview with Grażyna, 30 April 2015.

² Interview with Łukasz, 25 April 2015.

are flaws in the implementation of policies and laws, this signals important progress. However, those institutions do not have a mandate to deal with other hate crimes, including homophobic and transphobic crimes. In addition, the authorities do not systematically collect official data on homophobic and transphobic crimes or hate crimes against people with disabilities or homeless people. The extent of hate crimes targeting such groups therefore remains largely hidden. And this, in turn, hampers the design of effective policies to prevent and punish such crimes. The resulting lack of awareness and understanding on the part of judicial authorities of how to respond to these hate crimes appropriately has a negative impact on the ability of survivors to obtain justice.

“The court asked an expert whether the use of the word ‘faggot’ is offensive... the judge had a dismissive attitude and said off the record that he would have not been offended if someone referred to him by using that word... I found this comment so offensive and very revealing of the general attitude... people don’t care because they know they wouldn’t face negative consequences when using those derogatory words.”

Amnesty International interview with Frank who described what happened after he reported an alleged homophobic crime by police³

Similar gaps also exist in European Union (EU) law. While EU provisions require the enactment of domestic legislation to prohibit racist and xenophobic violence (EU Framework Decision 2008/913), there are no current provisions to address discriminatory violence motivated by, for example, disability, gender identity or sexual orientation. The adoption of EU laws addressing hate crimes motivated on these and other grounds would bridge the protection gap at the national level, as states, including Poland, are obliged to incorporate EU laws into their national legislation.

Consistent and comprehensive criminal provisions are an essential element in any effective strategy to prevent hate crimes. A legislative process was initiated in 2012 by members of the Polish Parliament (*Sejm*) with the aim of amending the current Criminal Code and extending the provisions on discriminatory violence and incitement to hatred to include other protected characteristics, such as disability, gender identity and sexual orientation.

This initiative provoked bitter opposition in some political circles and sectors of Polish society. The inclusion of sexual orientation and gender identity has sparked particular hostility, as shown by the discriminatory comments of some members of Parliament. For example, according to press reports, on 27 March 2015, Krystyna Pawłowicz, a member of the Law and Justice party, commenting on the revision of the Criminal Code and the support for it expressed by the then Minister of Justice, stated: “this government continues to introduce a sick ideology of gender, which promotes sexual pathologies”.⁴

Efforts to reform the Criminal Code have stalled, despite the support expressed in March 2015 by the then Minister of Justice. At the time of writing (July 2015), it seemed almost certain that Parliament would not pass the necessary legislative amendments before the general elections scheduled on 25 October 2015. If this indeed proves to be the case, then the newly elected

³ Interview with Frank, 21 April 2015.

⁴ <http://wpolityce.pl/polityka/238867-trzy-lata-wiezienia-za-obrazę-dewiantow-seksualnych-resort-sprawiedliwosci-zainteresowany-zmiana-prawa>, last visited 5 August 2015.

government should, as a matter of urgency, take a determined and uncompromising lead in proposing and supporting the adoption of comprehensive legislation on hate crime.

KEY RECOMMENDATIONS:

The Polish government should:

- Draft and introduce into Parliament a legislative proposal aimed at amending the Criminal Code so that crimes motivated by discrimination on any grounds, including age, disability, gender, gender identity, sexual orientation and social or economic status, are investigated and prosecuted as hate crimes.

The Polish Parliament (National Assembly) should:

- Approve a legislative proposal aimed at amending the Criminal Code so that crimes motivated by discrimination on any grounds, including age, disability, gender, gender identity, sexual orientation and social or economic status, are investigated and prosecuted as hate crimes.

The European Union should:

- Review Framework Decision 2008/913/JHA and ensure that any revised instrument establishes that crimes motivated by discrimination on any grounds, including age, disability, gender, gender identity, sexual orientation and social or economic status, are investigated and prosecuted as hate crimes.

METHODOLOGY

Amnesty International carried out two field research visits to Poland in March and April 2015. Delegates visited Białystok, Łódz, Lublin, Szczecin, Warsaw, Wrocław and Żywiec. They met representatives of 15 civil society organizations and victim support groups and 25 victims of alleged hate crimes and/or their lawyers. They also met 30 Polish officials, including representatives of the Regional and Circle Prosecutor's Offices in Białystok and Łódz; the Warsaw Regional Prosecutor's Office; the Office of the Prosecutor General; the regional police department in Łódz; the central police department in Warsaw; the Human Rights Protection Team within the Department of Control, Complaints and Petitions of the Ministry of the Interior; the Ministry of Justice; and the Office of the Human Rights Defender.

Amnesty International requested to meet the regional police departments in Białystok, Warsaw and Wrocław but these requests were not followed-up positively.

Semi-structured Interviews were conducted in Polish (with interpretation into and from English), English and French. Officials were informed in advance about the main topics of the interviews. Victims of hate crimes were informed in advance about the purpose of the project and the main ethical principles underpinning Amnesty International's research.

Fourteen cases concerning alleged hate crimes were researched. Seven involved crimes against refugees, asylum-seekers and migrants. One concerned a man who was promoting a Jewish historical-cultural project. Four were cases of men who were, or were perceived to be, gay or

bisexual. Two other cases involved homeless people. Information regarding legal proceedings in three cases was collected by accessing court records. These cases illustrate specific concerns regarding the impact of hate crimes on victims, the authorities' response to racist or xenophobic hate crimes and the consequences of the gaps in the Criminal Code regarding hate crimes perpetrated on other grounds than race, ethnicity, religion or nationality. These cases are not intended to establish quantitative trends regarding hate crimes in Poland.

In some cases, which are indicated in the text, the name as well as other personal information about the interviewees have been withheld or modified in accordance with their informed consent.

NOTE ON TERMINOLOGY

Polish criminal law includes some provisions dealing with crimes perpetrated on grounds of race, ethnicity, religion, nationality and political affiliation. In this report, these crimes are sometimes referred to as **racist and xenophobic hate crimes**.

Polish criminal law includes provisions regarding "**public incitement to violence and hatred**". This offence is sometimes referred to by authorities or other civil society organizations as "**hate speech**". Amnesty International, on the basis of Article 20.2 of the International Covenant on Civil and Political Rights (ICCPR), refers to "**advocacy of hatred that constitutes incitement to discrimination, hostility or violence**", which is more narrowly construed than "public incitement to violence and hatred".

Discriminatory violence refers to any act of violence targeting an individual, a community or a property because they belong to, or are associated with, a group defined by one or more protected characteristics, such as disability, race or sexual orientation. Discrimination on the basis of such protected characteristics is prohibited under international human rights law.

1. THE DUTY OF STATES TO COMBAT HATE CRIME

“The necessity of conducting a meaningful inquiry into the discrimination behind the attack on the march [...] was indispensable given, on the one hand, the hostility against the LGBT community and, on the other, in the light of the clearly homophobic hate speech uttered by the assailants during the incident. The Court considers that without such a strict approach from the law-enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes”.

European Court of Human Rights, *Identoba and Others v Georgia*⁵

Hate crimes are crimes committed against people because of their real or perceived identity or membership of a group defined by personal characteristics such as disability, ethnicity, gender identity, race, sexual orientation or social or economic status. They are a form of discrimination because the victim is chosen on the basis of personal characteristics that are protected under international human rights law (see Appendix 1 for a detailed list of international standards on hate crime).

⁵ European Court of Human Rights, *Identoba and Others v Georgia* (application no 73135/12), 12 May 2015.

Hate crimes often have a lasting and pernicious effect on individuals and communities. Victims' everyday lives are likely to be disrupted in the long term and a feeling of insecurity may affect entire communities. Under international and European law, the authorities must do their utmost to prevent these crimes. These responsibilities stem from the positive obligations on states to protect everyone from discrimination, whether by state officials or by non-state actors (private individuals or groups). This means that states must ensure that their own officials respect the right of everyone to be treated without discrimination and they must also put in place an effective legal and public policy framework to ensure that everyone has effective protection from discrimination by private individuals.⁶

The specific measures that governments are required to adopt and implement to protect the right to be free from discrimination and to prevent hate crimes may vary according to the particular challenges or other relevant circumstances in each country. However, they should at the very least include:⁷

- Criminal provisions including an open-ended list of discriminatory motives, based on protected characteristics under international human rights law – and, as a minimum, explicitly comprising age, disability, ethnicity, gender, gender identity, race, religion, sexual orientation and social or economic status – which constitute grounds to investigate and prosecute crimes as hate crimes;
- Specific guidelines for police and prosecuting authorities to ensure that they take all necessary steps to unearth any discriminatory motive associated with a crime;
- Police and prosecutorial structures equipped with the necessary skills to investigate and prosecute hate crimes;
- Whenever there is sufficient evidence of a discriminatory motive associated with a crime, that motive should also be duly taken into account by the courts when sentencing;
- Long-term policies aimed at combating discrimination and hate crimes – such policies should also include specific public education and other measures to counteract social stereotypes and prejudices which can fuel hate crimes;
- The collection of data on hate crimes disaggregated by specific motive with the aim of assessing the effectiveness, for different groups, of existing policies for protection against discrimination and identifying where new policies or additional measures need to be put in

⁶ In its General Comment No. 28, dealing specifically with gender-based discrimination, the Human Rights Committee, which is tasked with monitoring the implementation of the UN International Covenant on Civil and Political Rights (ICCPR), highlighted that: “The right to equality before the law and freedom from discrimination protected by Article 26 requires states to act against discrimination by private, as well as public agents in all fields.” General Comment No. 28: Equality of Rights between Men and Women (article 3), para 31, <http://www1.umn.edu/humanrts/gencomm/hrcom28.htm>, last visited 5 August 2015.

⁷ For a more detailed list of measures that states should adopt to counteract hate crimes, see Appendix 4: Amnesty International's checklist on hate crimes.

place;

- The protection of the rights of victims and witnesses, which should include support services, such as counselling and protection measures when needed, and access for victims to redress mechanisms;
- Thorough and effective investigations into any crime allegedly motivated by discrimination; and
- Unambiguous condemnation of hate crimes by public authorities.

The Polish authorities have already established a framework aimed at countering racist and xenophobic hate crimes. This includes criminal provisions regarding racist violence, specialized structures within the police and the Prosecutor's Office aimed at investigating and prosecuting hate crimes as well as the collection of some data (see Chapter 2). However, serious gaps remain with regards to other forms of hate crimes, including those motivated by disability, gender identity, sexual orientation and social or economic status (see Chapter 3).

THE GAPS IN EU LAW

EU legislation which focuses specifically on combating hate crime is limited and is narrower in scope than the protection against discrimination required under EU primary legislation (EU treaties) and international human right standards.

Framework Decision 2008/913/JHA was adopted in 2008 with the aim of countering racism and xenophobia using the criminal law. Article 4 of the Framework Decision, which applies to crimes committed with racist or xenophobic motivation, focuses exclusively on the penalties, requiring that member states ensure "that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties". This focus solely on penalties fails to reflect the requirement in European human rights law⁸ regarding the authorities' duty to take all reasonable steps, especially during the investigative phase, to unmask a xenophobic or racist motive for hate crimes. Consequently, the transposition of the Framework Decision into national law, and specifically its Article 4, does not in itself ensure that in practice the authorities take all necessary steps, in the context of the criminal justice system, to respond to such crimes.⁹

Furthermore, the Framework Decision does not establish that crimes arising from any other discriminatory motives should be investigated and prosecuted as hate crimes.¹⁰

⁸ See Appendix 1: Hate crimes: relevant international standards, investigating hate crimes.

⁹ See Amnesty International, *Missing the point: lack of adequate investigation of hate crimes in Bulgaria* (Index 15/001/2015), available at <http://www.amnesty.eu/en/news/statements-reports/eu/missing-the-point-lack-of-adequate-investigation-of-hate-crimes-in-bulgaria-0790/#.VZUVUfIViko>.

¹⁰ Article 4 of the Framework Decision refers to a "racist or xenophobic motivation". Other provisions of the instrument, including Article 1 "offences concerning racism and xenophobia", which include for instance

In meetings with Amnesty International, EU officials have highlighted that the EU competences in the area of criminal justice are limited to racism and xenophobia. They pointed to Article 67.3 of the Treaty on the Functioning of the European Union (TFEU) which states that: “the Union shall endeavour to ensure a high degree of security through measures to prevent and combat crime, racism and xenophobia”. They explained that it was unlikely that the European Commission would propose a revision of the Framework Decision with the aim of extending its scope to cover other grounds of discrimination.¹¹

However, the EU has competences in the area of combating discrimination, including discrimination on the grounds of age, disability and sexual orientation.

Article 21 of the Charter of Fundamental Rights of the European Union prohibits discrimination based on an open-ended list of grounds, including, disability, sexual orientation and social origin. This has been legally binding since 2009 for EU institutions and bodies and member states when implementing EU law.

Article 19 of the TFEU provides the legal basis for the Council of the European Union to adopt measures aimed at combating discrimination on grounds of age, disability, racial or ethnic origin, sex, religion or belief, or sexual orientation. On the basis of Article 19 of TFEU, the EU has adopted secondary legislation (directives) aimed at combating discrimination.¹² The adoption of those directives resulted in protection against discrimination on grounds such as age, disability or sexual orientation in the area of employment and occupation. Many European countries, including Poland, adopted domestic laws protecting those groups from discrimination on the job market because required to do so by EU law. The EU should rely on these competences to combat hate crimes on grounds other than racism and xenophobia, which are a form of discrimination.

publicly inciting to violence or hatred, covers explicitly these grounds: race, colour, religion, descent as well as national or ethnic origin, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008F0913>.

For further information see *Amnesty International submission to the European Commission and the Council of the European Union on the Framework Decision on racism and xenophobia (Council Framework Decision 2008/913/JHA)* (Index: IOR 52/001/2013), available at http://www.amnesty.eu/content/assets/Doc2013/AI_submission_EU_FD_racism_and_xenophobia_final_approved.pdf.

¹¹ Meeting with officials of the Directorate General Justice and Consumers, 5 March 2015.

¹² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

2. RESPONSE TO RACIST AND XENOPHOBIC HATE CRIMES

“I was beaten up because of racism... apart from the words used by the attackers, black people like me experience racism everyday here... we are for example called names on public transport... that is why we prefer to take a taxi when we go out”.

Christian, a young black student, 23 April 2015.

Christian, a student from sub-Saharan Africa, has lived in Poland since November 2013. On 12 August 2014, he was attacked in a nightclub in Łódź city centre in circumstances suggesting that this was a racially motivated hate crime. He described what happened to Amnesty International:

*“I entered the club and went down to look for my friends in the basement, where there is another dance floor. As I did not see them, I went up again to phone them. I met a Polish guy who started talking to me. He asked if I remembered him. I had never met him before. Then, he suggested going to the restroom to talk but I did not want to. I said we could have discussed outside. He dragged me into the nearby restroom, then at least five other people came... they all jumped on me, punched and kicked me. They used racist language including Nigger (Murzin), monkey (Małpa) as well as slogans such as ‘Poland belongs to Poles’. At some point, I managed to run away. I went to see the security guards and ask for help. They refused to help me, arguing that they did not protect monkeys. I went outside and met a girl who called the police. One police officer came and then called other colleagues. Other police arrived, they went into the club and arrested the attackers”.*¹³

Members of ethnic minorities, refugees, asylum-seekers and migrants continue to experience discrimination and violence, despite provisions in Polish law criminalizing violence or unlawful

¹³ At the time of writing (July 2015), no one had been charged. The investigators were still checking an alibi presented by the suspect of the physical assault against Christian. According to Christian’s lawyer, the police classified the physical assault as a beating resulting in bodily injuries (Article 158 of the Criminal Code) and the language used by the security guards as discriminatory insults (Article 257 of the Criminal Code). Interview with Christian, 23 April 2015. Phone interview with Christian’s lawyer, 2 June 2015.

threats¹⁴ against people on the basis of their race, ethnicity, nationality or religion. According to official statistics, discriminatory violence is on the rise. The number of recorded physical attacks in which victims were targeted because of their race, ethnicity, nationality or religion was 50% higher in 2014 than in 2013.¹⁵

Polish criminal law specifically includes some protected characteristics, namely race, ethnicity, nationality or religion, as grounds to investigate and prosecute some offences as hate crimes. In recent years, there have been reforms in both the police service and the Prosecutor's Office and specialized training has been provided for investigators and prosecutors. Although some concerns still exist in specific cases (see section 2.4), these reforms have generally resulted in a more effective response on the part of authorities to racist and xenophobic hate crimes.

2.1 LEGISLATION ON RACIST AND XENOPHOBIC HATE CRIMES

Under Polish criminal law, violence, or the threat of violence, motivated by race, ethnicity, religion, nationality or political affiliation, is a stand-alone offence and, on conviction, attracts a sentence of between three months and 5 years imprisonment.¹⁶ Inciting to violence, or publicly condoning violence, on the same grounds¹⁷ is also a stand-alone offence.

The law also treats as distinct criminal offences incitement to hatred¹⁸ and insulting a group or a person on grounds of race, ethnicity, nationality or religion¹⁹ (see Appendix 2).

Other criminal offences under Polish law do not contain any provision for a discriminatory motive to be taken into account as an aggravating circumstance. Therefore, there is no explicit requirement for the discriminatory motive to be taken into account in the prosecution of suspects of other criminal offences such as murder or grievous bodily injury whenever they are motivated by discrimination.

¹⁴ An "unlawful threat" is defined in Articles 190 and 115§12 of the Criminal Code. A threat is defined as "unlawful" only if it had the result of causing a "justified fear" in the person threatened.

¹⁵ Data from the Office of the Prosecutor General; 156 new investigations regarding discriminatory violence were initiated in 2014 compared to 102 in 2013. For detailed hate crimes statistics, see section 2.2.

¹⁶ Article 119§1 of the Criminal Code: "Whoever uses violence or makes an unlawful threat towards a group of person or a particular individual because of their national, ethnic, racial, 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". The Polish Criminal Code contains other provisions regarding common violent crimes including murder (Article 148§1), grievous bodily injuries (Article 156, 1 to 10 years' imprisonment) and bodily injuries (Article 157§1, 3 months to 5 years' imprisonment).

An updated version of the 1997 Criminal Code with its subsequent amendments in Polish is available at <http://prawo.lego.pl/prawo/kodeks-karny-z-dnia-6-czerwca-1997-r/>. An English translation, which is not up-to-date, can be found here: https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf, last visited 6 August 2015.

¹⁷ Article 126a of the Criminal Code.

¹⁸ Article 256 of the Criminal Code.

¹⁹ Article 257 of the Criminal Code.

However, on the basis of two general provisions of the Criminal Code (Articles 53§2 and 115§2) judges should in general take into account the motivation behind a crime when establishing the penalty.²⁰ Similarly, courts can take into account “motives deserving particular reprobation” when establishing the penalty for specific offences, such as murder.²¹ However, the judicial authorities do not collect comprehensive data on the use of these general provisions by courts.

ADVOCACY OF HATRED THAT CONSTITUTES INCITEMENT TO VIOLENCE

Under international human rights law, states are required to prohibit (although not necessarily criminalize) advocacy of hatred that constitutes incitement to discrimination, hostility or violence.²² Advocacy of hatred that constitutes incitement is much narrower than public insult or expressing approval of – but not actually inciting – a crime. It requires that clear intent be shown to incite others to discriminate, be hostile towards, or commit violence against the group in question. In general, criminal sanctions related to unlawful forms of expression should be seen as last resort measures to be applied only in strictly justifiable situations.

That is not to say that the public expression of racist or other discriminatory insults is not harmful to those who are the victims of such insults. It is, and states have an obligation to take effective steps to combat such verbal insults as part of their obligation to prevent and protect people against all forms of discrimination. But such insults do not necessarily amount to incitement to hatred in the sense identified by the ICCPR as the type of expression that states are obliged to prohibit.

The provision in Polish law regarding discriminatory insults – which criminalizes public insults against a person or a group on grounds of race, ethnicity, nationality or religion (Article 257 of the Criminal Code) – encompasses acts that do not reach the threshold established by international standards on advocacy of hatred that constitutes incitement to discrimination or violence.²³

²⁰ Article 53§2 of the Criminal Code: “In imposing the penalty, the court shall above all take into account the motivation and the manner of conduct of the perpetrator, committing the offence together with a minor, the type and degree of transgression against obligations imposed on the perpetrator, the type and dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his way of life prior to the commission of the offence and his conduct thereafter and particularly his efforts to redress the damage or to compensate the public perception of justice in another form. The court shall also consider the behaviour of the injured person”. Article 115§2: “In assessing the level of social consequences of an act, the court shall take into account the type and nature of the infringed interest, the dimension of the damage caused or anticipated damage, the method and circumstances of perpetrating the act, the importance of the duties breached by the perpetrator, as well as the form of intent and motivation of the perpetrator, the type of precautionary rules breached and the degree of the transgression”.

²¹ Article 148§2.3 of the Criminal Code.

²² Article 20.2 of the International Covenant on Civil and Political Rights (ICCPR).

²³ This report focuses on hate crimes, which are criminal offences perpetrated with a discriminatory motive. It does not aim at drawing comprehensive conclusions regarding the protection of the right to freedom of expression in Poland. However, Article 257 and some other provisions in the Polish Criminal Code, including Article 216 on insults, are problematic because they constitute restrictions on the right to freedom of expression which are not permissible under international human rights law. International human rights law permits states to impose

2.2 DATA ON RACIST HATE CRIMES

Disaggregated data on racist and xenophobic hate crimes are collected by the Human Rights Protection Team in the Ministry of the Interior and by the Office of the Prosecutor General. However, there are discrepancies in the data collected by these two institutions, mainly because they rely on different sources.

The Human Rights Protection Team collects data from media reports and civil society organizations. The Team then monitors the investigation of those cases. It recorded 315 cases in 2014, nearly twice as much than in 2013 when 175 cases were recorded. Of the cases recorded in 2014, 45 involved physical violence and more than three quarters (251) involved incitement to violence or hatred or discriminatory insults. More than two thirds (223) of the cases recorded were hate crimes motivated by race, ethnicity and nationality.²⁴

The Office of the Prosecutor General collects disaggregated data at different stages of the criminal justice process, namely investigation, indictment and judgment. The Office recorded 1,062 new investigations in 2014, an increase of 50% compared with 2013 when 719 new investigations were initiated. In 2014, 156 investigations (about 15%) were cases involving physical violence.²⁵ This increase is partly due to the improvements in recording and prosecuting hate crimes (See chapter 2.2).

The Ministry of Justice also compiles data on court judgments disaggregated by articles of the Criminal Code. According to the data provided by the Ministry of Justice to Amnesty International, there were 59 convictions for hate crime in Polish courts in 2013. Eight of these were related to

certain restrictions on the exercise of the right to freedom of expression if such restrictions are demonstrably necessary and proportionate for the protection of certain specified public interests (national security, public order, protection of health or morals) or for the protection of the rights of others (including the right to protection against discrimination). On this basis states may impose certain restrictions on certain forms of expression, which could include some forms of discriminatory expression, if they can demonstrate that such restrictions are necessary (that is, no lesser measure will suffice) and proportionate to the specified purpose. But criminalization is a disproportionate restriction on all forms of expression, including discriminatory expression, which do not reach the threshold of intent of “advocacy of hatred that constitute incitement to discrimination, hostility and violence”, established by Article 20.2 of the ICCPR. As noted elsewhere in this report states have a responsibility to counter the expression of discriminatory attitudes by means such as public education, as well as by ensuring that their own officials speak out to condemn such expression when it occurs; they also may impose certain other demonstrably necessary and proportionate limitations on such expression, but in order to meet the test of proportionality any such restrictions must fall short of criminalisation. Laws criminalizing defamation or insult to religious or beliefs or feelings also violate the right to freedom of expression. These include Article 212 (defamation) and 196 (insulting religious feelings) of the Polish Criminal Code.

²⁴ See Chart 1 in Appendix 3.

²⁵ See Chart 2 in Appendix 3. The figure regarding investigations into cases of physical violence includes both new investigations opened in 2014 and investigations which had been launched in previous years but had yet to be concluded in 2014.

violent hate crimes (Article 119§1 of the Criminal Code). The data was not disaggregated by discriminatory motive. According to officials, data on convictions regarding offences under Articles 119§1, 126a, 256 and 257 and disaggregated by motive has been collected since 1 July 2015 as part of a pilot project by the Ministry of Justice.

Specific data concerning the application of Articles 53§2 or 115§2²⁶ by courts when sentencing in hate crime cases is not available.²⁷

2.2.1. UNDERREPORTING OF HATE CRIMES

Victim support groups who spoke to Amnesty International were at pains to point out that racist crimes are still often underreported. For example, staff at Sekurs, a project to assist victims of hate crimes started in 2011 by the organization Nomada in Wrocław, explained that most instances of threats and violence against the Roma community living in two informal settlements in Wrocław were not reported to police.²⁸ Anna Galik of Sukurs said: “They would report major attacks on the settlements but not the everyday threats or harassment they experience on the street. That’s also because many had negative experience with police when begging on the street”.²⁹ Agata Ferenc of Nomada said: “these kind of attacks and threats happen all the times. That’s why the community is very careful and tends to stick together. For example, they don’t go out during the night except by car.”³⁰

²⁶ See footnote 20.

²⁷ Meeting with the Ministry of Justice, 27 April 2015. On 22 July 2015 The Sub-Committee on Criminal Code of the Extraordinary Committee on Amending Codes, in charge of examining the three joint bills aimed at amending the Criminal Code (see Section 3.1), requested the Ministry of Justice to conduct further research regarding the application of these articles by courts.

²⁸ According to the 2009 FRA-EU MIDIS survey, 28% of the Roma interviewed in Poland had been victim of serious harassment, threats or assaults in the 12 months prior to the survey. One fourth of the victims perceived the crimes against them as racially motivated. The survey found that Roma in Poland is the minority group in Europe who trusts the police the least. Fifty-eight per cent of those interviewed said they tended not to trust the police, only 13% tended to trust them. The survey also found that averagely in Europe almost 85% of crimes perpetrated against Roma are not reported. European Union Agency for Fundamental Rights, European Union Minorities and Discrimination Survey, Main Results Report, <http://fra.europa.eu/en/publication/2012/eu-midis-main-results-report>, last visited 6 August 2015.

²⁹ Interview with Anna Galik and Katarzyna Pawlik, 30 March 2015.

³⁰ Meeting with Agata Ferenc and other staff members of Nomada, 30 March 2015. About 80 Roma originally from Romania live in two informal settlements. They moved to Wrocław in the 1990s and live in a situation of extreme socio-economic exclusion. On 24 November 2012, about 20 people attacked the biggest settlement in Kamińskiego Street. Two suspects were convicted of violence motivated by discrimination (Article 119§1 of the Criminal Code) and discriminatory insults (Article 257 of the Criminal Code). On 5 and 21 August 2014, a fire erupted in the other informal settlement on Paprotna Street. No one was in the settlement at that time. Sekurs reported the two events to police. On 8 September, police informed Sekurs that an investigation was ongoing for damage of property (Article 288§1 of the Criminal Code). On 22 July 2015, the Roma families living in Paprotna

According to James Omolo, founder of Foundation Africa Connect, the black African community was at particular risk of violent attacks and underreporting of racist hate crimes, largely due to lack of trust in the police, remained a major problem:

“In 2010 a Nigerian man was killed by police. The investigation went on for two years. The officer was finally acquitted. This case had a huge impact on the black African community and contributed to undermining its trust in the authorities. We keep insisting that they have to report hate crimes to the police, but sometimes, even when they do, the investigation does not lead anywhere, they don't see a difference.”³¹

Christian, a young black student who was attacked in September 2014 in Łódź, told Amnesty International: “I have a lot of Black friends who were attacked here in Łódź, many did not report their case to the police. In my case the police got involved but I would have not reported it otherwise... I don't think they can do much. I am also afraid this may result in problems when I will have to extend my student visa.”

L., a student from Mozambique living in Łódź, told Amnesty International about several occasions on which he had been threatened and harassed since his arrival in Poland in 2010. He said the worst incident occurred in the summer of 2013 when he was physically assaulted while attending an outdoor festival with three friends: “I think it was an organized attack motivated by racism... we were not doing anything special, just chatting in Portuguese. At some point, a guy approached and poured some beer on us. Shortly after, someone behind me shouted: ‘Let's attack the monkeys!’ We were all badly beaten up... one of my friends had a broken jaw, another one a broken arm... I was lucky and just had some bruises.”

Neither L. nor his friends reported the attack to the police: “When our attackers left, I could not remember their faces, they were wearing hats which covered their foreheads, the faces were not very visible... when the attackers left, two Polish guys came to help me, I was told they had heard that police were coming to look for black guys who were fighting... that's typical... police may have sided with the attackers... I don't trust them really”.³²

Street were forcibly evicted, <http://nomada.info.pl/oswiadczenie-w-sprawie-zburzenia-domow-romow-rumunskich-przez-sluzby-miejskie-wroclawia>, last visited 6 August 2015.

³¹ Meeting with James Omolo, 29 March 2015.

³² Interview with L, 28 April 2015.

2.3 INVESTIGATION AND PROSECUTION OF RACIST AND XENOPHOBIC HATE CRIMES

According to the Polish Code of Criminal Procedure (CCP), the Prosecutor's Office³³ is responsible for carrying out investigations into criminal offences, although some parts of the investigation can be delegated by the Prosecutor's Office to the police.³⁴

In practice, investigations into hate crimes are undertaken by the police under the supervision of the Prosecutor's Office. Within 14 days of the conclusion of a criminal investigation, the Prosecutor must issue an indictment or suspend the case (for example, if suspects have not been identified) or discontinue the investigation (for example, if there is not enough evidence that a criminal offence has been committed).³⁵ The indictment must include the specific charges of which the suspects are accused as well as the circumstances in which the offence was committed.³⁶

In recent years, law enforcements and judicial authorities have taken a number of positive steps to strengthen their institutional response to racist and xenophobic hate crimes. Specialized structures have been established in the Ministry of the Interior, the police force and the Prosecutor's Office to investigate and monitor the investigation of racist and xenophobic hate crimes.

- In 2004, the Human Rights Protection Team was established within the Department of Control, Complaints and Petitions of the Ministry of the Interior to monitor and collect data about the investigation of racist and xenophobic hate crimes, as well as allegations of any criminal offences perpetrated by police officers and border guards. This is one of the few specialized mechanisms whose remit since 2011 has extended to homophobic and transphobic hate crime³⁷ (see Chapter 3);
- Within the police, specialized human rights officers have operated at both the central and regional levels since 2004. A network of 17 Plenipotentiaries for the Protection of Human Rights (one at the central level and one in each of the 16 Regional Police Departments) was created to ensure that the police abide by international and regional human rights instruments. It also coordinates police human rights training, including on hate crime. A new structure focusing specifically on hate crimes has been in place since late 2014. This includes a central coordinator and 16 regional coordinators in the criminal investigation units of the police headquarters and the regional police departments. These new coordinators have taken over the main responsibilities of the Plenipotentiaries for the

³³ The Prosecutor's Office is an institution separate from the Ministry of Justice. It is composed of the Office of the Prosecutor General and, in hierarchical order, the Appellate Prosecutor's Offices, Circle Prosecutor's Offices and District Prosecutor's Offices.

³⁴ Article 311 of the CCP. On 27 September 2013, several amendments to the 1997 CCP were approved by Parliament. These amendments entered into force on 1 July 2015 (Act 1247/2013). These amendments are available in Polish <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130001247>, last visited 6 August 2015.

³⁵ Article 331 of the CCP.

³⁶ Article 332§1 of the CCP.

³⁷ Meeting with the Human Rights Protection Team, 26 March 2015.

Protection of Human Rights in the area of hate crimes.³⁸

- In July 2013, the Prosecutor General took the decision to establish specialized prosecutors who deal with hate crimes, among other crimes. Each Circle Prosecutor's Office appoints, within its area of competence, two District Prosecutor's Offices to deal with hate crimes. In turn, each Chief District Prosecutor nominates two prosecutors in each office to supervise the investigation of and to prosecute hate crimes. This system has been operational since April 2014.³⁹
- Hate crime cases within the criminal justice system are monitored through a mechanism established in 2004. The Office of the Prosecutor General produces two reports a year which include a list of new hate crime cases investigated, a description of court rulings concerning those cases and a summary of statistical data. Any decision regarding the investigation of a hate crime can be supervised and reviewed by a higher-ranking Prosecutor's Office.⁴⁰

On 26 February 2014, the Office of the Prosecutor General issued guidelines on the investigation of hate crimes. These state that the investigation of allegations of hate crimes must be considered as of primary importance and that prosecutors must strive to identify the motives of the perpetrators on the basis of the available information.⁴¹ No such specific guidelines have been adopted at the level of police.⁴²

³⁸ Meeting with the Plenipotentiary for the Protection of Human Rights at the Police Headquarters, 15 May 2015.

³⁹ If necessary, more than two District Prosecutor's Offices can be appointed by each Circle Prosecutor's Office to deal with hate crimes. This is also stated in paragraph 12 of the Prosecutor General's Guidelines on Instituting Proceedings in Hate Crime Cases, PG VII G 021/54/13, of 26 February 2014.

⁴⁰ Meeting with the Office of the Prosecutor General, 27 April 2015. Para 14 of the Prosecutor General's guidelines on instituting proceedings in hate crime cases establishes that: "Each preliminary proceedings in hate crime cases is considered an action of immense significance... and there is an obligation to inform the superior prosecutor about instituting preliminary proceedings and then about actions and events important to its course". Para 15 establishes that: "Having received information referred to in subsection III.14, the prosecutor in charge of the organizational unit of a superior level evaluates whether there are any grounds for subjecting the case to supervision". The general prosecutorial powers regarding supervision and revision of investigations are set out by Article 326 of the CCP.

⁴¹ Paragraph 6 of the Guidelines, PG VII G 021/54/13.

⁴² Police officials in Łódź told Amnesty International that police investigators follow the guidelines issued by the Prosecutor General when investigating allegations of hate crimes. Meeting with police authorities in Łódź, 28 April 2015.

2.4 RESPONSE TO RACIST AND XENOPHOBIC HATE CRIMES IN PRACTICE

Most of the civil society organizations and victim support groups Amnesty International met agreed that the authorities' responses to racist crimes had improved in recent years. However, in some cases the authorities had responded effectively only where incidents occurred in the context of an escalation of racist violence. In many cases, an earlier and quicker response could well have prevented some of the attacks. For example, in Białystok, the authorities firmly condemned racist violence and arrested many of the suspects only in the aftermath of an arson attack targeting the house of an Indian-Polish family in May 2013, several years after the first racist threats and attacks had occurred.

THE WAVE OF RACIST ATTACKS IN BIAŁYSTOK

In recent years, Białystok, a city of about 300,000 inhabitants in north-eastern Poland, has been shaken by a wave of violent racist and xenophobic attacks allegedly perpetrated by organized groups of hooligans. The city is home to a small community of a few hundred Chechen asylum-seekers and refugees, as well as other small minority ethnic groups such as Belarusians and Tatars.

In meetings with Amnesty International, activists, journalists and victims of hate crimes acknowledged that the authorities' response to the situation had improved after 2013 when there were several arson attacks targeting minority ethnic communities. In particular, an arson attack against an Indo-Polish family received extensive media coverage, prompting a reaction from central government. However, most of those interviewed also pointed out that prior to that attack, the authorities had not responded promptly to racist attacks and it was only when the violence escalated that they started to intervene effectively.⁴³

A journalist who has followed cases of discriminatory violence for many years told Amnesty International that the phenomenon of hate crimes by organized groups started in 2007. She described how these attacks were perpetrated by organized groups of hooligans, some of whom were either connected to or members of a football supporters' club: "At the beginning, foreign students were targeted with verbal abuse on the street. Then in 2009 a Cuban woman was attacked in a mall. Things escalated in 2012 and reached a peak in 2013 when at least five arson attacks targeted foreigners and their property. People were living in a climate of fear and most of those who had been attacked decided to leave the city".⁴⁴

In November 2012, someone tried to burst into the flat where the Umarov family, originally from Chechnya, lived. Albert Umarov told Amnesty International: "I was not at home, my mother was alone with my younger son. Someone attacked the entrance door with an axe. Everyone was terrified. We called the police. They came and asked a couple of questions. We never received any update on the investigation. After the attack, we decided to move away and we went to Germany for a couple of months."⁴⁵ Since the family returned to Białystok their car has been vandalized twice in 2013 and set

⁴³ Meeting with two activists who ran the Trzy Rzecze and monitored hate crimes in Białystok for several years before moving to Warsaw, 22 April 2015, a journalist who has covered cases of hate crime since 2009, a representative of the Foundation Dialogue, two victims of hate crimes and a Chechen family who experienced several threats and attacks, 29 and 30 April 2015.

⁴⁴ Interview with Joanna Klimowicz, 29 April 2015.

⁴⁵ Interview with Albert and Dzhabrail Umarov, 30 April 2015.

alight once in 2014.

In February 2013, Rogers Cole Wilson, a TV presenter originally from Sierra Leone, was followed as he walked home and physically assaulted in front of the entrance to his apartment. The perpetrators used racist language along the lines of: "What are you doing here monkey?"⁴⁶

It was during this period that Ewa decided to settle in Białystok with her Indian husband, Naresh. The couple initially moved in with Ewa's parents. The couple was racially insulted several times on the street. Then, on the night of 8 May 2013, the family's flat was set alight. Ewa's mother, Grażyna, described what happened:

"On that night, we were all in bed by 1.30am except my husband who was still in the living room. He heard an explosion and then saw a fire in the corridor. Fortunately he was awake, otherwise we could have all suffocated. I knew that this was because Naresh was staying with us. The same happened a couple of weeks before to a Chechen family who lived a couple of blocks away. I think the authorities took the attack seriously because we got a lot of media interest. My other daughter went on TV".⁴⁷

This arson attack proved a turning point. The Minister of the Interior, Bartłomiej Sienkiewicz, who travelled to Białystok, vehemently condemned the attack. The Minister publicly declared "We will mobilize all possible national resources, means and forces in order to prevent this kind of incident in the future. The state will act in this case with an unforgiving attitude".⁴⁸

In 2014, more than 50 people were arrested for participating in an organized criminal network, which had also allegedly perpetrated hate crimes against members of minority groups. In April 2014, a further eight suspects were arrested. Some of the victims and representatives of civil society organizations told Amnesty International that this helped improve the atmosphere in the city.

However, attacks continued in 2014. On 28 July 2014, Dzhabrail Umarov, was threatened by a neighbour who had previously harassed the family and been convicted of damaging the family's car in 2013; the car was set alight and completely destroyed in July 2014. Dzhabrail Umarov told Amnesty International: "I was driving to a shop with my brother and cousin and I saw him on the street. He made the gesture of a gun. I stopped and called the police".⁴⁹ Although the situation has generally improved, the Umarov family still feels threatened and want to leave the city. Albert Umarov said: "We still don't feel safe here. We're staying until my son completes his school year but then we

⁴⁶ Interview with Rogers Cole Wilson, 29 April 2015. The racist motive of the attack was taken into account by the authorities. A suspect was arrested and identified by Rogers Cole Wilson. He was initially convicted but subsequently acquitted by the Court of Cassation in February 2015.

⁴⁷ The perpetrators of the arson attack on Grażyna's flat, which was classified as a hate crime (Article 119 of the Criminal Code), were not found. Meeting with the District and Circle Prosecutor's Offices in Białystok, 29 April 2015.

⁴⁸ The declarations of the Minister can be found on the official webpage of the Ministry of Interior, <https://msw.gov.pl/pl/aktualnosci/10893,dok.html>, last visited 6 August 2015.

⁴⁹ On 13 January 2015, the perpetrator was convicted to 2 months' imprisonment for threats (Article 190§1 of the Criminal Code). Dzhabrail said the perpetrator had a xenophobic motive, especially in view of the fact that he had previously targeted his family.

would like to move somewhere else. My wife is always stressed and she doesn't even want to go out".

The prosecuting authorities in Białystok told Amnesty International that tackling hate crimes was a priority and confirmed that some of these crimes were carried out by members of a football supporters' club and were motivated by racism. However, at the same time, they sought to minimize the discriminatory aspect of these crimes by highlighting the fact that in some cases the perpetrators were merely drunk and acted alone. The authorities also denied that the city had experienced a wave of racist hate crimes, stating that the extensive media coverage of a few arson attacks had given the impression of an emergency. Finally, they pointed out that most of the hate crimes registered in the city constituted incitement to hatred or racist insults rather than violence and that the increase in those crimes recorded in official statistics in 2013 and 2014 was largely because an NGO was monitoring and collecting such cases.⁵⁰

The authorities' response to anti-Semitic threats and violence against Tomasz Pietrasiewicz and other activists in Lublin followed a similar, initially ineffective, pattern. It took more than three years and the appointment of a new prosecutor before suspects were identified and prosecuted for organizing an anti-Semitic campaign against Tomasz Pietrasiewicz and other activists. The case illustrates the strength and depth of anti-Semitic attitudes that were stirred by Tomasz Pietrasiewicz' commitment to revive the Jewish heritage of Lublin. It also shows the urgent need for an appropriate and committed response from the authorities at the local and national level to counter anti-Semitic views promptly and firmly to prevent them escalating into discriminatory violence.

ANTI-SEMITIC THREATS AND ATTACKS IN LUBLIN

In 1990 Tomasz Pietrasiewicz established the Grodzka City Gate Centre-NN Theatre, a cultural institution which includes a theatre, a museum and a variety of projects aimed at raising awareness of the Jewish cultural heritage of the city. In 1939, one third of the city's 120,000 population was Jewish. Most of those who survived the Holocaust left after the war or were expelled following an anti-Semitic campaign orchestrated by the Communist government in the late 1960s.

"Reviving Jewish Lublin was almost a moral commitment for me, even if I am not Jewish. No one knew about this part of history in the 1990s. Many friends asked me why I was doing that... there was a general climate of oblivion".
Tomasz Pietrasiewicz, April 2015.⁵¹

Tomasz Pietrasiewicz was the target of threats and violence for several years. In 2010, someone threw a stone at his house. He did not report the attack as he thought it was just an act of hooliganism. However, following a similar incident in December 2010, he noticed that a Nazi swastika had been painted on two stones thrown at the house. He reported the attack but felt that the authorities did not take it seriously: "They lacked the knowledge and experience to understand what was going on. I had the impression they were not aware at all of the far-right scene and that they considered the attack as political folklore; they did not know how to categorize it".⁵²

⁵⁰ Meeting with the District and Circle Prosecutor's Offices in Białystok, 29 April 2015.

⁵¹ Meeting with Tomasz Pietrasiewicz and Tomasz Kitliński, who was also targeted by the poster campaign, 24 April 2015.

⁵² According to the Helsinki Foundation for Human Rights the attack was subsequently qualified as a hate crime (Article 119 of the Criminal Code) in May 2011,

Tomasz Pietrasiewicz's house was targeted many other times. On one occasion in November 2011, an explosive device was placed under a window; it was deactivated by explosive experts. The authorities then offered to move him to another house, but he declined. Cameras were installed in front of his house. The investigations into these attacks were discontinued as the perpetrators were not found.

From 2011 until 2014, Tomasz Pietrasiewicz was the target of an anti-Semitic campaign. Posters were put up in public places with photographs of Tomasz and other activists and intellectuals in Lublin who had supported him, alongside images of the Star of David and hostile or anti-Semitic messages: "These posters were pasted twice on my door. That was one of the worst experiences. I felt very stigmatized, as if I were a public enemy... I kept feeling that authorities did not know about these issues. Finally, a new prosecutor was appointed in 2012. During the first meeting with him, I noticed immediately the difference in terms of awareness".

"Even today, whenever my name appears, it stirs a lot of hate speech and threats. Recently, a swastika was painted on the walls of the Grodzka centre".

Tomasz Pietrasiewicz, April 2015

In January 2014, six suspects who allegedly organized the anti-Semitic campaign were arrested. Five of them were charged with participating in an organization aimed at propagating fascism and incitement to hatred on ethnic grounds; one person was charged with supporting those activities. At the time of writing, court proceedings were continuing.

Other activists engaged in combating discrimination in Lublin, including Tomasz Pietrasiewicz's son Szymon, have also been threatened. In 2012, "Lublin for all", a public campaign launched by Szymon and aimed at promoting diversity in the city attracted a lot of opposition from far-right groups and their supporters, who staged a demonstration in front of the city hall accompanied by discriminatory speech such as "Lublin free of fags" and other hostile messages such as "A boy and a girl are a normal family".

In recent years, there has been a gradual increase in the number of prosecutions for racist and xenophobic hate crimes. In the past the investigation of minor physical injuries sustained during incidents motivated by racism or, more often, incitement to hatred, would be halted if prosecutors considered that the "minor social harm" associated with these offences did not require public prosecution. Nowadays, these cases are increasingly the subject of public prosecutions.⁵³ In 2013, for example, no investigations into hate crime cases were discontinued on the basis that they constituted "minor social harm".⁵⁴

According to the Office of the Prosecutor General, the number of hate crime cases in which the decision to discontinue the investigation was identified as problematic in the context of the monitoring system decreased substantially after the appointment of specialized prosecutors dealing

<http://www.hfhrpol.waw.pl/dyskryminacja/litygacja/dyskryminacja-pochodzenie-narodowe-i-etniczne/>, last visited 6 August 2015.

⁵³ Meeting with the representatives of the Office of the Human Rights Defender, 21 April 2015.

⁵⁴ Report of the Office of the Prosecutor General on hate crimes for 2013, PG II P 404/10/13.

with hate crimes; from 25-30% before 2014 to 14% in 2014.⁵⁵

Despite these improvements, some NGOs still report cases of the failure of the investigation to identify and take into account the racist motive⁵⁶, as the case of J. below shows.

ATTACK AGAINST J.

"For me it's important to seek justice, I could have died on that night... the attack terrified me... if we don't punish those people [who attacked me], they will have the impression they can get away with it."⁵⁷

J., a Syrian refugee who has been living in Poland for several years, was first verbally abused and then physically attacked on his way out of a night club in Warsaw on 20 July 2014. He described to Amnesty International what happened.

"After my work shift, at about midnight, I went to one of those outdoor clubs on the river banks with a couple of colleagues. At some point I approached a girl who was standing next to six or seven security guards. I noticed that a customer who looked like a football hooligan and whose arms were tattooed was chatting with them. When I approached them, they made racist comments – "Fuck niggers, fuck Jews" (Jebać Czarnych) – against me. The tattooed guy asked me to buy him a drink if I wanted to remain in the club. Initially, I accepted. Then, when we approached the bar counter, he started verbally abusing me again. I therefore decided to leave the club. On my way out, at least three people attacked me with wooden sticks. I realized that one of my attackers was a security guard."

J. ran away from his attackers and went back into the club. A bar attendant helped him and called an ambulance. Shortly afterwards, two police officers arrived on the scene. They briefly talked to J., who was then taken to hospital. According to the medical records seen by Amnesty International, J. was treated for bruises and injuries on his face. His teeth were also damaged.

In a letter responding to inquiries by Amnesty International, the Prosecutor's Office clarified that two investigations into the attack had been opened: one against a suspect who had been identified and charged and the other against unknown perpetrators.⁵⁸ The attack on J. was classified as a physical assault (Article 158 of the Criminal Code) and did not take into account any racist motive.

⁵⁵ Meeting with the Office of the Prosecutor General, 27 April 2015.

⁵⁶ Meeting with a representative of the Association for Legal Intervention, 25 March 2015. The Association was providing support to victims in about 15 cases of hate crime. The representative told Amnesty International that in most of those cases the discriminatory motive had not been unearthed by police and taken into account in the classification of the crime.

⁵⁷ Interview with J., 26 March, 2015.

⁵⁸ Letter E-578 of 22 May 2015 from the Warsaw District Prosecutor's Office, Praga Południe.

3. GAPS IN PROTECTION

“The authorities do not know how to deal with homophobic crimes. If the law protected LGBTI people, these crimes would be more visible... the authorities would acknowledge that they happen”.

Agnieszka Stach, a lawyer who intervened in the case of murder of a gay man in Szczecin.⁵⁹

Whilst Polish Criminal law explicitly criminalizes some hate crimes, including discriminatory violence, committed against ethnic, national and religious minorities, other groups do not enjoy the same level of protection, because characteristics such as age, disability, gender identity, sexual orientation and social or economic status are not explicit grounds for investigating and prosecuting offences as crimes motivated by discrimination: that is, hate crimes.

In its 2013 Concluding Observations on Poland, the UN Committee against Torture stated that: “neither the Act [Equal Treatment Act] nor the Penal Code provide adequate and specific protection against discrimination based on sexual orientation, disability or age... The Committee recommends that the State party incorporates offences in its Penal Code to ensure that hate crimes and acts of discrimination and violence that target persons on the basis of their sexual orientation, disability or age are punished accordingly”.⁶⁰

Due to the legislative gaps, an attack against a lesbian woman who is targeted with homophobic slurs and subsequently beaten up on the street will be recorded, investigated and prosecuted as a common crime. A similar attack suffered by a black woman and associated with racist slurs can be recorded, investigated and prosecuted as a hate crime (under article 119§1 of the Criminal Code).

This difference in the treatment of these crimes is in itself discriminatory. There is indeed no objective and reasonable justification for treating these two crimes differently. Just as race and ethnicity are protected characteristics under international and European human rights law, so too are age, disability, gender identity, sexual orientation and social origin, which includes social or

⁵⁹ Interview with Agnieszka Stach, 25 April 2015.

⁶⁰ Committee against Torture, Concluding observations on Poland (CAT/C/ POL/CO/5-6), para 25 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsr0yVMLY8ltqp7elpaWy9%2fzhpgAgxlvOwYIHQRBCyv6Z5WSAJ4meQ2lea4vsJ8k3h%2fQY3d6Rp6d2fr%2fQBcD8lelihupgGzImqabAYJnfd9HS>, last visited 6 August 2015.

economic status.⁶¹ The European Court of Human Rights has recently reiterated that: “Treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights”.⁶²

The mandate of all the specialized mechanisms established by the Polish authorities to investigate and prosecute racist and xenophobic hate crimes (see Chapter 2) does not cover other forms of hate crimes such as those perpetrated on grounds of age, disability, gender, gender identity, sexual orientation and social or economic status. The only mechanism whose remit does extend to other hate crimes than those perpetrated on grounds of race, ethnicity, nationality and religion, namely homophobic and transphobic hate crimes, is the Human Rights Monitoring Team within the Ministry of the Interior (see section 2.3).

These gaps in protection have a number of consequences. For example, there is no systematic collection of data on these latter types of hate crimes. This in turn means that the scale of such crimes remains hidden and adequate policies to prevent and punish them are not adopted.

The protection gaps in the Criminal Code also result in significant differences regarding the

⁶¹ Social origin is an explicitly protected characteristic included in the open-ended list of protected characteristics in Article 2.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as articles 2.1 and 26 of the ICCPR. Commenting on this, the Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR (which Poland is a state party to), pointed out in its General Comment No. 20 on Non-Discrimination that: “Social origin refers to a person's inherited social status, which is discussed more fully below in the context of “property” status, descent-based discrimination under “birth” and “economic and social status” (para 24).” Moreover, the Committee highlighted that “Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places” (para. 35). Social origin is also a prohibited ground of discrimination in the Council of Europe's Revised European Social Charter (Article E) as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14). Poland is a state party to the ECHR and has signed, but not ratified, the Revised Charter. However, Poland has ratified the 1961 European Social Charter whose preamble clarifies that “social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin”. Outside Europe, the American Convention on Human Rights prohibits discrimination on many grounds including social origin and economic status in the access of all the rights protected by the Convention (Article 1).

⁶² *Identoba and Others v. Georgia*, judgment of 12 May 2015. The Court found that the failure on the part of Georgian authorities to protect LGBTI demonstrators from violence at a Pride March in Tbilisi in 2012 and to launch an investigation with the aim of unearthing any alleged homophobic and transphobic motives behind the violence amounted to a violation of Article 3 (prohibition of inhuman or degrading treatment) and Article 11(right to freedom of assembly), in conjunction with Article 14 (prohibition of discrimination) of the Convention. Available at [http://hudoc.echr.coe.int/eng?i=001-154400#{"itemid":\["001-154400"\]}](http://hudoc.echr.coe.int/eng?i=001-154400#{), last visited 6 August 2015.

prosecution of incitement to violence (Article 126a) or hatred (Article 256). Incitement to violence or hatred on grounds such disability, gender identity or sexual orientation, do not constitute criminal offences.

When asked about these gaps, and more specifically why incitement to hatred against Jewish people should be qualified differently than, say, incitement to hatred targeting transgender people, a prosecutor in Warsaw told Amnesty International: “There are so few transgender people in Poland that I am wondering why we should include a specific protection ground for this group in the Criminal Code... anti-Semitic speech is different because this is an historical issue and there are still many Poles of Jewish origin”.⁶³

Gaps in protection	Race, ethnicity, nationality, religion	Other grounds
Legislation on discriminatory violence	✓	X
Legislation on incitement to violence or hatred	✓	X
Specialized prosecutors	✓	X
Guidelines for prosecutors	✓	X
Monitoring system established by the Prosecutor General	✓	X
Police coordinators	✓	X
Police training	✓	**
Human Rights Protection Team/Data collection	✓	**
Data collection (other authorities)	✓	X
** only sexual orientation and gender identity		

3.1 REVISION OF THE CRIMINAL CODE

In recent years, several proposals to amend the provisions of the Criminal Code regarding hate crimes have been introduced into Parliament (*Sejm*). When this report was going to press (August 2015), three bills introduced by members of Parliament from different political parties were pending approval.

⁶³ Meeting with the District Prosecutor’s Offices of Warszawa Żoliborz and Warszawa-Śródmieście, 27 April 2015.

The first bill (Bill no 340) was introduced by members of the Palikot's Movement on 12 March 2012. It aimed at adding age, disability, gender identity, sex and sexual orientation to the list of protected characteristics included in the provisions of the Criminal Code regarding discriminatory violence (Article 119), incitement to hatred (Article 256§1) and discriminatory insults (Article 257).⁶⁴

Another bill (Bill no 2357), proposed by members of the Democratic Left Alliance on 7 March 2014, also aimed at adding these characteristics to the same criminal provisions. In addition, it also sought to amend the provisions of the Criminal Code regarding any discriminatory treatment on grounds of religion (Article 194), interference with public worship (Article 195) and insults to religious feelings (Article 196). The bill proposed that the first two offences should attract a higher penalty if perpetrated by public officials. It also sought to define the latter provision more narrowly, reducing the penalty and establishing that this offence can only be privately prosecuted.⁶⁵

On 27 November 2012, members of the ruling Civic Platform party introduced draft legislation (Bill No 1078) which, if adopted, would extend current protection against hate crimes and incitement to hatred. However, this proposal did not include specific reference to the protected characteristics not currently covered by the Criminal Code. Rather, it sought to establish that violence, threats or incitement to hatred on grounds of "national, ethnic, racial, political, social, natural or acquired personal characteristics or beliefs" constituted criminal offences.⁶⁶ The extent to which this formulation would cover other protected characteristics, such as gender identity, sexual orientation or social and economic status, remains unclear.

On 24 June 2014, the Sub-Committee on Criminal Code of the Extraordinary Committee on Amending Codes⁶⁷ resolved that the three bills should be examined at the same time.

The government was initially critical of the three bills. In particular, regarding bills proposed by the opposition parties (Bill No 340 and Bill No 2357), it argued that the current general provisions of

⁶⁴ The text of Bill No 340 can be found in Polish at <http://sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=2357>, last visited 6 August 2015. In a meeting with Amnesty International, the Chair of the Sub-committee on the Criminal Code of the Extraordinary Committee on Amending Codes said that this proposal had been withdrawn. However, Sekuła Szmajdzińska, the Member of Parliament who proposed the bill, did not confirm this information in a phone call with Amnesty International on 29 June 2015.

⁶⁵ The text of the proposal is available in Polish here: <http://sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=2357>, last visited 6 August 2015.

⁶⁶ In Polish: "narodowej, etnicznej, rasowej, politycznej, społecznej, naturalnych lub nabytych cech osobistych lub przekonań".

⁶⁷ Legislative proposals usually undergo three readings before the *Sejm*. When a bill is approved by the *Sejm*, it has to be examined by the Senate, which can also propose amendments but has less powers in the legislative procedure than the *Sejm*. The *Sejm* can indeed reject the proposals from the Senate (including if the Senate rejects the bill) by absolute majority. The President of the Republic also has the power of veto in the legislative procedure, which can be overcome by a majority of 3/5 of the *Sejm*. Further information on the legislative procedure is available in English at <http://opis.sejm.gov.pl/en/procesustawodawczy.php>.

the Criminal Code (such as Article 53§2) ensured adequate protection against any form of discriminatory violence. Regarding Bill No 1078, the government pointed out that the notion of “natural or acquired personal characteristics or beliefs” was legally uncertain.⁶⁸

However, according to media reports, on 20 February 2015, in a letter to the Plenipotentiary for Equal Treatment, the then Minister of Justice, Cezary Grabarczyk, expressed support for extending the scope of the current provisions on discriminatory violence and incitement to hatred to disability, gender identity and sexual orientation, sparking vehement opposition from some members of Parliament. For example, on 27 March, Krystyna Pawłowicz, a member of the Law and Justice party, reportedly said:

*“With no electoral legitimacy this government continues to introduce a sick ideology of gender, which promotes sexual pathologies. Persons affected by sexual diseases dominate the political life nowadays because the government favours them. The government, in turn, has neither electoral nor constitutional legitimacy. This is a scandal. Criminal prohibitions, penalties of imprisonment and fines for expressing one’s own views?...Nobody likes being criticized, they will immediately say they feel offended, discriminated against, that is hate speech.”*⁶⁹

Prosecutors expressed mixed opinions regarding the amendment of the criminal provisions on discriminatory violence and incitement to hatred. More specifically, some expressed reservations regarding extending the scope of the provision on discriminatory violence (Article 119 of the Criminal Code). For example, a prosecutor in Łódź said: *“We could add new protected characteristics but where do we go? There are so many groups that could be added”*.⁷⁰ A prosecutor in Białystok expressed similar views arguing that: *“It is possible to deal with homophobic violence on the basis of the existing provisions of the Criminal Code... the Criminal Code is not so specific, there are general provisions that are applicable to those cases”*.⁷¹ However, it is not clear what this statement is based on given that, as mentioned earlier (sections 2.1 and 2.2), there is a lack of data on how the courts are applying Articles 53§2 and 115§2 of the Criminal Code, the provisions which enable judges to take into account perpetrators’ motivation in sentencing. In some cases of homophobic violence and violence against homeless people where courts established either a discriminatory motivation or another aggravating circumstance, this did not seem to be reflected in the sentence (see the case of Dariusz Paczkowski, the killing of Jan and the attack on Stanisław N, in sections 3.2 and 3.3).

In meetings with Amnesty International, Ministry of Justice officials pointed out that the government believed the three bills should be discussed jointly at the level of the Sub-Committee, but gave no

⁶⁸ The opinion of the government on Bill No 1078 is available at <http://sejm.gov.pl/Sejm7.nsf/druk.xsp?documentId=974FAC8B308266CAC1257B6C0025C035>, last visited 6 July 2015.

⁶⁹ <http://wpolityce.pl/polityka/238867-trzy-lata-wiezienia-za-obrazę-dewiantow-seksualnych-resort-sprawiedliwosci-zainteresowany-zmiana-prawa>, last accessed on 6 August. Translation by Amnesty International.

⁷⁰ Meeting with the Regional Prosecutor’s Office in Łódź, 28 April 2015.

⁷¹ Meeting with the Regional Prosecutor’s Office in Białystok, 29 April 2015.

Every year, hundreds of people in Poland become the victim of beatings, harassment and other crimes simply because of their identity or their belonging to a certain minority group. Such hate crimes are a form of discrimination and a criminal manifestation of it. Hate crimes have a pernicious and long-lasting impact on victims and communities and require a coherent and thorough response from policy makers, law enforcement officials and the criminal justice system.

In Poland, the authorities' response to hate crimes remain inadequate, especially in light of the lack of protection for hate crimes perpetrated on grounds such as age, disability, gender, gender identity, sexual orientation and social or economic status. However, activists and grass-rooted groups promote numerous activities to counteract discrimination and hate crimes. Because of their commitment, they have often been threatened and attacked themselves.



BIAŁYSTOK



Mural painted by Anna Kitlas and Francesco Chekos'art, artists and human rights defenders, in the neighbourhood of Białystok, where Grażyna and her family live.

On 8 May 2013, hooligans tried to set their house alight (right). The family had been verbally abused since Grażyna's daughter Ewa and her Indian husband Naresh moved to Białystok in February 2013. In recent years, the city has been shaken by a wave of violent racist and xenophobic attacks (see p.20 of the report).

The mural depicts a quote of a famous Polish poet, Kazimierz Przerwa-Tetmajer. It says: *"All people are equal. It's inequality that divides them."*



LUBLIN/ ŻYWIEC

In 1990, Tomasz Pietrasiewicz, an artist and human rights defender, established the Grodzka City Gate Centre-NN Theatre, a cultural institution with the aim of reviving the Jewish history of Lublin. Because of that, he has been targeted for years with threats and violence. His house was attacked and he became the victim of an anti-Semitic public campaign (see p.20 of the report).

Tomasz told Amnesty International: *“Reviving Jewish Lublin was almost a moral commitment for me, even if I am not Jewish. No one knew about this part of history in the 1990s. Many friends asked me why I was doing that... there was a general climate of oblivion”.*



(Above left) In 2010, Dariusz, a street artist and human rights defender, moved to Żywiec. He reached out to local communities and involved young and older citizens alike in public activities to combat discrimination, which included participatory street art project. Dariusz' street art is often a powerful and colourful message for equality. For example, the mural above featuring Marek Edelman, a famous Polish Jew who led the 1943 Warsaw Ghetto Uprising, was painted by Dariusz in



Żywiec and replicated in many cities across Poland. It says: "Hatred is easy. Love requires effort and sacrifice".

(Above right) On 13 December 2014, Dariusz was targeted with homophobic violence by two passers-by in front of one of his murals featuring middle-class citizens of Żywiec wearing traditional clothes against the backdrop of a rainbow (see p.34 of the report).

SZCZECIN



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(Above) Vigil organised on 12 January 2014 in the area where P., a young gay student, was found dead on 5 January in the city of Szczecin, in north-western Poland (see p.32 of the report).

(Left) Aldona, a drag-queen performer and activist in Szczecin, explained to Amnesty International the impact of the murder of P. on the LGBTI community in the city: *“After the murder, LGBTI people started thinking about their own safety, especially because P. was killed in the city centre... this could have happened to anyone... in June 2014, a new gay club opened in town and we received many queries about security because people were still traumatized.”*

timeline for decisions on any amendments to the current legislation.⁷² In June 2015, the Chair of the Sub-Committee, Jarosław Pięta, told Amnesty International that the joint bills may be voted on by Parliament in September 2015.⁷³ However, on 22 July the Sub-Committee requested the Ministry of Justice to carry out further research into the current legislative framework and more specifically into whether the existing general provisions (such as Articles 53§2 and 115§2) constituted an adequate response to hate crimes motivated by grounds other than race, ethnicity, nationality or religion. When this report went to press (August 2015), it seemed almost certain that the current Parliament would not pass the bills before the elections on 25 October 2015.⁷⁴

3.2 HOMOPHOBIC AND TRANSPHOBIC HATE CRIMES

Lesbian, gay, bisexual, transgender and intersex (LGBTI) people are not adequately protected against hate crimes and discrimination in Poland. Despite suffering widespread discrimination,⁷⁵ the scope of Polish anti-discrimination law is very limited and protects lesbian, gay and bisexual people only in the area of employment. Transgender and intersex people are not explicitly protected from discrimination on grounds of gender identity and expression.⁷⁶

Same-sex couples are not recognized and do not enjoy any legal protection in Poland. In January 2013, Parliament rejected three bills on registered partnerships. On 26 May 2015, Parliament rejected a bill on civil partnerships, including for same sex-couples, refusing even to initiate a debate on the issue.⁷⁷ Furthermore, transgender people must undergo a long process, which includes psychiatric assessment and medical treatment, in order to obtain legal recognition of their gender.⁷⁸

⁷² Meeting with Ministry of Justice officials, 27 April 2015.

⁷³ Meeting with Jarosław Pięta, 10 June 2015.

⁷⁴ If the vote does not take place before the parliamentary elections scheduled for October 2015, the bills will be void as the legislative process cannot be continued by the newly elected parliament. In those circumstances, a new draft would have to be introduced and the process started again from the beginning.

⁷⁵ According to a European survey carried out in 2013 by the European Union Agency for Fundamental Rights, 21% of the Polish lesbian, gay or bisexual individuals who were interviewed said they had been discriminated against in school and 18% when looking to rent or buy a flat in the previous year. The comparable figures for transgender people were 25% and 19%. LGBT survey data explorer, <http://fra.europa.eu/DVS/DVT/lgbt.php>, last visited 6 August 2015.

⁷⁶ Act on the implementation of certain provisions of the European Union on equal treatment of 3 December 2010, in force since 1 January 2011. An English translation of the Act is available at: <https://www.rpo.gov.pl/en/content/act-3rd-december-2010-implementation-some-regulations-european-union-regarding-equal>, last visited 6 August 2015.

⁷⁷ <http://www.polityka.pl/tygodnikpolityka/kraj/1620801,1,zwiazki-partnerskie--nie-w-tej-kadencji.read>, last visited 6 August 2015.

⁷⁸ On 23 July, the Parliament's Lower House (*Sejm*) approved the "Gender Accordance Act", which would allow transgender people to obtain legal gender recognition upon fulfilment of three criteria (single status, Polish citizenship and two medical documents certifying that the applicant's gender identity is different from the one

In recent years, members of Parliament have repeatedly used discriminatory language against LGBTI people. For example, Anna Grozdka, the first and so far only transgender member of Parliament, has often been the target of transphobic comments from other MPs since she entered Parliament in 2011.

All the evidence suggests that homophobic and transphobic hate crimes are significantly underreported. According to the Campaign Against Homophobia (KPH-Kampanii Przeciw Homofobii), the main LGBTI organization in Poland which collects data on homophobic and transphobic hate crimes and provides assistance to victims, only about 10% of the hate crimes reported to its legal team are also reported to the police. This is in line with the results of the 2012 LGBT survey undertaken by the European Union Agency for Fundamental Rights (FRA).⁷⁹ In 2014, KPH's legal team recorded some 120 cases of homophobic and transphobic hate crimes, the overwhelming majority of which targeted people on grounds of their sexual orientation (90%). About 50 of the cases reported involved violence.

The Human Rights Protection Team within the Ministry of the Interior recorded seven and eight homophobic hate crimes in 2013 and 2014, respectively. In the same period, the Team did not record any transphobic hate crimes. The discrepancies between the official data and the numbers recorded by KPH underscore both the scale of underreporting and the flaws in the data collection system implemented by the Human Rights Protection Team.

In some cases, the bias of officials responsible for collecting statements from victims can also constitute a barrier to reporting. According to the FRA LGBT Survey, 27% of the LGBT people in Poland who did not report the most serious threat or violent attack against them said they had feared a homophobic or transphobic reaction from police.⁸⁰

In April 2013, Matteo, an Italian national living in Poland, was physically assaulted in Wrocław while he was walking in the city centre with a Polish friend. His attacker used homophobic language against him and then punched him in the face. Matteo and his friend called the police twice. They immediately mentioned the homophobic motive. The first time, moments after the attack, they were told they had to go to the station to report the attack as police could not come to the scene of the crime. The second time, police did come. Matteo explained what happened to them in English, as his knowledge of Polish was limited. Police insisted on communicating in Polish and argued that as

assigned at birth): http://transfuzja.org/en/artykuly/press_releases/polish_parliament_makes_trans_history.htm

last visited 15 August 2015. However, on 7 August the Senate passed an amendment to the text adopted by the Sejm; it introduced the necessity to hear experts in Court proceedings regarding legal gender recognition, including when this applicant is a person of age. The Sejm was expected to discuss the amendment in September:

http://transfuzja.org/en/artykuly/press_releases/polish_senate_passes_the_gender_accordance_act_with_unnecess_ary_amendments.htm, last visited 11 August 2015.

⁷⁹ According to the survey, 10% of the LGBT victims of hate crimes surveyed had reported the last discriminatory incident of violence or threat of violence they had suffered to the police.

⁸⁰ LGBT survey data explorer, <http://fra.europa.eu/DVS/DVT/lgbt.php>

Matteo was in Poland, he was supposed to speak Polish. When Matteo insisted on giving his testimony in English, the police left.⁸¹

The absence of laws specifically dealing with hate crimes perpetrated on grounds of sexual orientation and gender identity means that these crimes are investigated and prosecuted as common crimes. Police and prosecutorial officials are not required to unearth any alleged homophobic or transphobic motive, and often fail to do so, as the case of P., a young gay student murdered in 2014, illustrates.

THE MURDER OF P., A YOUNG GAY MAN, IN SZCZECIN

On 5 January 2014, P., a 20-year-old student, went to a gay club in Szczecin, a city in north-western Poland. When he left the club, he met three other men. The morning after, a passer-by found his body on a nearby construction site. His face was covered with bruises, he had no shoes, his trousers had been pulled down and his jacket and blouse tucked up.⁸²

The forensic medical examination established drowning as the cause of death; his face had probably been pushed into a puddle on the clay soil of the construction site. The examination excluded that he had been raped.

On 10 January, three men were identified on the basis of witnesses' statements and video recordings from the closed circuit television on the street where the men met P. Two were considered to be suspects; the third was present at the scene of the murder but, according to records of the legal proceedings, did not participate in the murder and was considered to be a witness.

The two suspects were initially charged with participating in a physical assault that resulted in death (Article 158 §1 and §3 of the Criminal Code). In June 2014, the charges were modified. In particular, one of the suspects was charged with murder (Article 148§3 of the Criminal Code).

Some of the circumstances surrounding this murder point to a possible homophobic motive. However, the authorities failed to take these elements into account in the investigation and prosecution of the suspects. Apart from the fact that P. was gay and that he was killed near a gay club, other elements pointing to a possible homophobic motive emerged during the judicial proceedings. In particular, on 5 January 2014, one perpetrator wrote a message to a friend on Facebook mentioning that P. had died and referring to him as a "faggot" (*pedał*).

In court, the two suspects said that they had physically assaulted P. because he would not leave them alone. They also mentioned that P. had offered them oral sex and that made them angry as he became very intrusive. They acknowledged that they had taken P.'s wallet and mobile phone but could not explain why they had done so.

According to Agnieszka Stach, the lawyer who intervened in the case on behalf of two LGBTI organizations – Równość na Fali and Campaign Against Homophobia – the suspects did not give a reason for attacking P., which could indicate

⁸¹ Interview with Matteo, 3 June 2015.

⁸² Agnieszka Stach, the lawyer who intervened in the case on behalf of two LGBTI organizations, provided Amnesty International with some information concerning this case in an interview carried out on 25 April 2015. Amnesty International also requested and obtained access to the records of the court proceedings. The information presented here is based on those two main sources.

a discriminatory motive:

“However, the prosecuting authorities completely disregarded the possibility that the perpetrators had a homophobic motive. This is not the classic case in which the perpetrators threatened the victim with homophobic insults before the attack, that’s why it would have required a much more pro-active approach on the part of authorities to identify the possible homophobic element”.

On 2 February 2015, one man was sentenced to 15 years’ imprisonment for murder (Article 148§1 of the Criminal Code) and robbery. The other was sentenced to two years’ imprisonment for participating in a physical assault that resulted in death (Article 158§1 of the Criminal Code), suspended for five years. When passing sentence, the court did not mention at any point a possible homophobic motive. The two men lodged appeals against their sentences. On 11 June 2015, the appeal Court upheld the judgment.

As homophobic and transphobic hate crimes are not classified as hate crimes by the police and prosecuting authorities, it is less likely that courts will take into account the discriminatory motive behind these crimes. Polish courts can generally take into account the motive of the perpetrators when passing sentence on the basis of Articles 53§2 or 115§2 of the Criminal Code (see section 2.1). However, it is impossible to assess the extent to which they do so in cases of hate crime, as disaggregated data is not collected on this (see section 2.3).

In cases where there is strong evidence pointing to a homophobic motive, such as homophobic insults, the courts can take such a motive into account and this may be reflected in the sentence. However, as the handling of the attack on Dariusz Paczkowski shows, courts can and do ignore such evidence.

THREATS AND PHYSICAL ATTACK AGAINST DARIUSZ PACZKOWSKI

In 2010, Dariusz Paczkowski, a street artist and human rights defender, moved to Żywiec, a town in south-central Poland. Shortly afterwards, he and some friends decided to establish the NGO *Foundation Klamra* to promote diversity and to counter discrimination and intolerance. He told Amnesty International:

*“There was basically no wall in town free of Nazi symbols... I started informing the police and organizing actions to get rid of them. A year later, we launched a similar action in Wieprz, a neighbouring village, where dozens of Nazi symbols spoil the public space and where a neo-Nazi group was particularly active. We also started a research and educational project in order to raise awareness of these issues. What struck us most was that citizens were passively accepting the presence of these Nazi symbols in the public space of their towns”.*⁸³

Dariusz reached out to local communities in Żywiec, including the Roma community, and involved young and older citizens alike in public activities to combat discrimination. He told Amnesty International that the situation has worsened in the last couple of years. Discriminatory messages have reappeared, especially around 11 November, Polish Independence Day, which in recent years has become the focus for far-right demonstrations promoting discriminatory messages across the country. For instance, in November 2014 the slogan “Great White Poland” was painted along with a Celtic cross on the wall of the school attended by Romani children in Żywiec. Dariusz received several threats, including over the phone, and was also listed on Red Watch, a far-right website publicizing information about anti-

⁸³ Interview with Dariusz Paczkowski, 28 March 2015.

fascist activists.

In November 2014, Dariusz painted a mural featuring middle class citizens of Żywiec wearing traditional clothes against the backdrop of a rainbow. The wall painting has been vandalized several times. On 13 December 2014, Dariusz was physically assaulted. He told Amnesty International:

“On that day, I accompanied the film director Wojtek Jankowski to the site where the mural stood; he was shooting a film about the controversies stirred by the rainbow as a symbol in Poland. The mural had been already damaged twice before then. We were standing in front of it when two passers-by started insulting me. They used very homophobic language including ‘Fuck faggot whore’. Then one spat at and kicked me. When they left, I followed them. I reported to police that one man hit me. He was arrested shortly after.”

On 4 May 2015, the District Court of Żywiec sentenced the attacker to six months’ imprisonment and a fine of 2000 zloty (approximately 450 euros) for threats and physical violence (Articles 190 and 217 of the Criminal Code). According to Dariusz’s lawyer, the judge referred to the homophobic motive orally when stating to the defendant what crime he had been convicted of and what his sentence would be. However, in the written record of the judgment, seen by Amnesty International, the homophobic language against Dariusz was described simply as “vulgar” and no explicit reference was made to the homophobic motive of the attack.

3.2.1 HATE CRIMES BY STATE OFFICIALS

The main focus of this report is on the obligation of the state and its officials to protect people against hate crimes by private actors. But the state also has an obligation to ensure that its own officials, including law enforcement officials, respect the principle of non-discrimination and do not themselves commit crimes against people whose human rights they have a duty to protect.

The investigation and prosecution of hate crimes allegedly perpetrated by state officials, including when motivated by either racism or homophobia, raise additional concerns, in particular in view of the lack of an independent mechanism tasked with the investigation of criminal allegations against law enforcement officials in Poland.⁸⁴ Allegations of such human rights violations by state officials must be promptly and thoroughly investigated by a body independent of the alleged perpetrators. If sufficient evidence exists, the suspected perpetrators must be prosecuted in a fair trial and, if convicted, face a penalty commensurate with the gravity of the violation. Victims must be afforded

⁸⁴ The specific concerns regarding the investigation of allegations of criminal offences perpetrated by state actors are outside the scope of this report. The Human Rights Defender (Rzecznik Praw Obywatelskich) can request the launch of an investigation into allegations of criminal offences that require public prosecution, conduct an investigation on her own initiative and then, if required, hand over the results to the prosecutor to follow up with a criminal investigation and monitor the criminal investigation. More information on the powers of the Human Rights Defender can be found here: <http://www.brpo.gov.pl/en/content/act-human-rights-defender>, last visited 5 August 2015. In 2014, the Prosecutor General issued guidelines concerning the investigation of criminal offences allegedly perpetrated by state officials. Although no specialized prosecutors are tasked with the investigation of these allegations, officials met by Amnesty International, including officials of the Office of the Human Rights Defender, pointed out that particular attention was paid in order to assign each allegation of a criminal offence perpetrated by a state official to a prosecutor who did not regularly cooperate with the unit or department in which the state official suspected of the criminal offence was operating.

reparation, including compensation.

In the case of allegations of hate crimes by state officials, the authorities should ensure the collection of relevant disaggregated data, as for hate crimes generally. In Poland, although some overall data on crimes allegedly perpetrated by state officials is available,⁸⁵ officials informed Amnesty International that no disaggregated data regarding hate crimes perpetrated by state officials was collected.

ALLEGED HOMOPHOBIC ATTACK BY POLICE AGAINST FRANK

In September 2010, Frank went to a club in central Warsaw with his former partner and a friend. When they left at about 2am, two police officers approached them on the street and asked what was going on. Frank told Amnesty International:

*"We were not shouting or anything, we were just chatting. We said that we were friends and that everything was fine. One officer replied saying: 'I don't think you are friends, I think you are faggots'. My partner told him that this was not how a public official should have addressed us. The officer reiterated: 'a faggot is not going to tell me how to address people'."*⁸⁶

The two officers checked Frank and his friends' identities, without offering any reason for doing so. Their car was parked near the club and Frank was told that he had to follow them to the police station: "I asked why, what was the problem and they did not tell me anything. At that point another police car came. My boyfriend was also asking questions and I noticed that they were becoming more and more aggressive. I said I would go with them, I wanted to talk to a competent person, not on the street like that. They handcuffed me and put me in the car. Even today, almost five years later, I don't know why they wanted to arrest me".

At some point the car stopped and Frank said he was physically assaulted by at least one of the police officers. He told Amnesty International:

"The driver sprayed tear gas at me and then hit me on the head with his fist and feet. After that, I don't remember very much... they dragged me out of the car and they continued to kick me... I don't know if only one or both did. Then, they threw me back in the car and my head bashed into the roof. I was taken to a sobering-up station. There, I said I did not want those officers to touch me anymore. One of them certainly continued to use homophobic language against me as the recordings of the closed-circuit television installed in the facility show. They did the alcohol test, but no other test was carried out. The following morning I was taken to the police station. I immediately said I had been beaten up by police. This was included in my statement. I found out there that charges had been brought against me

⁸⁵ The Human Rights Protection Team within the Ministry of the Interior collects data on crimes allegedly perpetrated by police and border guards. Thirty-three and 37 such cases were recorded in 2013 and 2014, respectively. The Team told Amnesty International that in 2013 they had analysed 47 of the most serious cases of ill-treatment perpetrated by state officials; they found that the victims were members of ethnic minorities in two out of three of those cases (although this is not sufficient to establish that all those crimes were hate crimes).

⁸⁶ Interview with Frank, 21 April 2015. Frank is a pseudonym. The real name has been withheld in accordance with the informed consent expressed by the interviewee.

by the two police officers.”

Frank was charged with violating the personal inviolability of a public official (Article 222§1 of the Criminal Code), insulting a public official (Article 226§1 of the Criminal Code) and damaging an item belonging to someone else (Article 288§1 of the Criminal Code). He was convicted in a court of first instance. He lodged an appeal against his conviction, which was on-going at the time of writing (July 2015).

According to the Campaign against Homophobia, who provided legal support for Frank, the Warsaw District Prosecutor's Office (Prokuratura Rejonowa dla Warszawy-Woli w Warszawie) did not bring charges against the two police officers for lack of evidence of the physical assault. Frank filed a private criminal lawsuit against them. In June 2015, court proceedings were continuing. According to the information available to Amnesty International, an internal police investigation had also been carried out and brought to light the recordings of the closed-circuit television installed in the sobering-up facility where Frank spent the night.⁸⁷

3.3. VIOLENCE AGAINST OTHER GROUPS

Very little official data is available concerning hate crimes against other groups, such as older people, people with disabilities, homeless people or, more generally, people with lower social or economic status.

As with homophobic and transphobic hate crimes, crimes which may be motivated partly or wholly, by other protected characteristics such as the disability, gender or lower social or economic status of the victim, are investigated and prosecuted as common crimes. In theory, any alleged discriminatory motive associated with violence against these groups can be taken into account by courts in sentencing. However, the lack of data concerning the application of Articles 53§2 and 115§2 of the Criminal Code (see section 2.1) means it is not possible to draw conclusions on the extent to which courts identify discrimination as an element in the motivation for such crimes.

3.3.1. PEOPLE WITH DISABILITIES

In 2012 Poland ratified the International Convention on the Rights of Persons with Disabilities. Under Article 16 of the Convention, Poland must put in place adequate mechanisms to combat violence, exploitation and abuse against people with disabilities.⁸⁸

The authorities do not collect official data on hate crimes against people with disabilities. Nor do they collect statistics about violence in general against this group. According to research undertaken at the end of 2013 by the Polish Society for Persons with Intellectual Disability (PSOUU- Polskie Stowarzyszenie na Rzecz Osób z Upośledzeniem Umysłowym), violence against people with intellectual disabilities is widespread. More than 87% of those who took part in the study had experienced some form of violence. More than 61% had experienced physical violence and 29% had experienced

⁸⁷ Information provided by Campaign Against Homophobia. Meeting with the legal department of Campaign Against Homophobia, 22 April 2015. On 29 May 2015, Amnesty International sent a letter to the Warsaw District Prosecutor's Office about Frank's case. No response had been received at the time of writing (July 2015).

⁸⁸ Article 16 of the UN Convention on the Rights of Persons with Disabilities (CRPD), available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#16>

sexual violence.⁸⁹ According to the report, people with intellectual disabilities are at greater risk of violence because they are more dependent on others, perceived as “weaker”, are less likely to report abuse and have low self-esteem. While this does not point directly to discrimination, it does indicate a possible underlying discriminatory motive behind the violence experienced by people with intellectual disabilities which should be taken into account not only in the investigation of individual cases of violence, but more generally in the design of public policies aimed at combating discrimination against people with disabilities.

3.3.2 WOMEN AND GIRLS

According to an EU-wide survey undertaken by the European Union Agency for Fundamental Rights in 2014, 19% of the women interviewed in Poland had experience sexual or physical violence from the age of 15.⁹⁰

Some forms of violence against women and girls are hate crimes, if they are motivated, wholly or partly, by the gender of the victim. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence defines gender-based violence against women as “violence that is directed against a woman because she is a woman or that affects women disproportionately”.⁹¹ The Convention requires states to adopt legislative measures to prevent and investigate⁹² all forms of violence against women, including gender-based violence.

On 27 April 2015, Poland ratified the Convention. The discussion leading to the ratification sparked very strong opposition. Some politicians took exception to what they termed “the ideology of gender”. For example, Andrzej Duda, who was subsequently elected President of Poland on 5 May 2015, reportedly said:

“I will appeal to the president, also in writing, and ask him not to ratify the anti-violence convention. This law is harmful, under the guise of domestic violence, it refers to all kind of pathologies affecting the family and traditions. It smuggles vicious content that is contradictory to nature and is steeped in leftist ideology. People support it, but only because of its catchy title.”⁹³

Although there are other provisions in the Polish Criminal Code to combat some forms of violence

⁸⁹ Ninety people with light or mild intellectual impairment took part in the research. At the time of writing, the results of the research had yet to be published. PSOUU provided Amnesty International with some results and gave consent for them to be published in English. Meeting with PSOUU, 22 April, 2015.

⁹⁰ European Union Agency for Fundamental Rights, Violence against Women: an EU-wide survey – Main results, 2014, available at http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf, last visited 6 August 2015.

⁹¹ Article 3d of the Convention. The text of the Convention is available at <http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%20210%20English.pdf>.

⁹² Article 5 of the Convention.

⁹³ In Polish: <http://wiadomosci.dziennik.pl/polityka/artykuly/482195.konwencja-antyprzemocowa-przyjeta-sejm-przeglosowal-ratyfikacje.html>.

against women and domestic violence,⁹⁴ gender is not an explicitly protected ground in the legislation regarding discriminatory violence (Article 119 of the Criminal Code).

3.3.3 HOMELESS PEOPLE

In recent years, more than a dozen cases of extreme violence against homeless people have been reported by the media in Poland. In most of these cases, victims died or suffered severe physical injuries. At least five homeless people were attacked in three separate incidents between January and April 2015; one died following the attack.⁹⁵ The perpetrators of these attacks often said that they had targeted homeless people because they were “bored” and because they perceived homeless people as weak, in view of their lower social or economic status.

As part of their obligation to protect people from discrimination, including hate crime, states have an obligation in the course of their investigation of crimes to identify any such motivation. For example, one perpetrator of the attack against Stanisław (see below) used derogatory words during the interrogation to refer to other attacks he had carried out against other homeless people. Such statements can suggest a possible discriminatory motive that should be investigated further. The court acknowledged that Stanisław had been targeted because he was perceived as a “weak person”.

Similarly in the case of the killing of Jan (see below), the court noted that the attackers had targeted him because of his perceived weakness linked to his low socio-economic status which meant that he would be unable to defend himself and also that he was unlikely to report the attack to the authorities. While this is not in itself necessarily discriminatory, it is likely to be an indicator of, and go hand-in-hand with, a motivation based on discrimination or hostility against a particular group. Therefore, in such cases the authorities should pursue the investigation with a view to establishing whether the perpetrators have in fact deliberately targeted someone because of their identity as a member of a particular group.

Identifying hate crimes and the discriminatory motivation that lies behind them is vital, not only to ensure justice for the victims, but also to enable reliable data to be gathered about the extent of discrimination in society against particular groups, which can inform public policy measures to ensure effective protection from discrimination.

THE ATTACK AGAINST STANISŁAW AND THE KILLING OF JAN

On 5 October 2012, Stanisław N, a 58-year-old homeless man, was beaten up by a young man (aged 18) and a youth (aged 16) in Rzeszów in south-eastern Poland. The next day, the same people poured a flammable substance on him

⁹⁴ See for example Chapter 25 of the Criminal Code: Crimes against sexual freedom and decency.

⁹⁵ These include a physical attack against a homeless person in Biesko-Biała, April 2015, http://www.se.pl/wiadomosci/polska/bielsko-biala-maczeta-odcieli-bezdomnemu-palce-i-ucho-potem-wyrzucili-na-smietnik_587485.html; the attack against a homeless person in Bydgoszcz, March 2015, <http://www.tvn24.pl/wiadomosci-z-kraju,3/potrakil-bezdomnego-w-bydgoszczy-uslyszal-zarzuty,527052.html>; as well as the attack against three homeless individuals (two men and a woman) in Starachowice, <http://www.tvn24.pl/krakow,50/pobili-bezdomnych-bo-probowali-wyprosic-pieniadze-nie-zyje-44-latek,535331.html>, last visited 6 July 2015.

and set him alight. Stanisław suffered grievous bodily injuries and burns and required repeated surgery.

During the investigation, the suspects said that they had targeted Stanisław because they were bored and admitted that they had previously attacked other homeless people. The records of the investigation, to which Amnesty International had access, reported that one of the perpetrators said: *“If I remember correctly, we attacked bums (Żule) eight times in the last six months. We did it for no specific reason, we were bored”*.

The proceedings against the 16-year-old suspect were transferred to a juvenile court. The other perpetrator was charged with inflicting grievous bodily harm (Article 156§1.2 of the Criminal Code) and attempted robbery involving the use of violence (Articles 13§1 and 280§1 of the Criminal Code). Inflicting grievous bodily harm can attract between one and 10 years' imprisonment. On 14 May 2013, he was found guilty by the Court of First Instance of Rzeszów and sentenced to 2.5 years' imprisonment.

During sentencing, the court mentioned the motivation of the perpetrator. More specifically, the judge pointed out the high degree of social harm associated with the crime, in particular the perpetrator had targeted a homeless person by taking advantage of his weaknesses. The victim appealed against the sentence for, among other things, not being consistent with the gravity of the motivation identified by the court. On 5 November 2013, the Court of Appeal rejected the appeal and upheld the judgment of the Court of First Instance.

Jan was a 65-year-old man with a history of alcohol abuse living in dilapidated social accommodation with no electricity or running water in Chrzanów in southern Poland. On the night of 10 April 2011, three young men from his neighbourhood entered his flat and tortured him before tying his legs together, rolling him in a blanket and throwing him into the river.

Two of the men were charged with manslaughter (Article 148§1 of the Criminal Code), the other was charged with inflicting bodily injuries (Article 157§1 of the Criminal Code). On 28 November 2011, a court of first instance found two of the men guilty of inflicting bodily injuries causing Jan's death (Article 156§3), a less serious crime than manslaughter, and sentenced them to four years' imprisonment. The other perpetrator was sentenced to 2.5 years' imprisonment.

According to the records of the court proceedings, to which Amnesty International had access, the court took into account the high degree of social harm associated with the killing and relied on Articles 53§2 and 115§2 of the Criminal Code.⁹⁶

The prosecutor appealed against the sentence on the grounds that the penalty imposed was strikingly lenient in view of the motivation of the perpetrators. On 16 December 2013, at the request of the Appeal Court, the court of first instance reconsidered the case and the perpetrators were tried again. The Court found two of the perpetrators guilty of manslaughter (Article 148§1 of the Criminal Code), which carries a sentence of between eight years and life imprisonment. One man was sentenced to eight years' imprisonment and the other to eight and a half years. In the written justification of the sentence, the court pointed to the motivation of the killing, in particular the fact that the perpetrators had targeted Jan because they perceived him as “weak”. On 24 July 2014, the Court of Appeal upheld the conviction.

⁹⁶ Amnesty International requested and obtained access to the files concerning the judicial proceedings from the courts.

RECOMMENDATIONS

Amnesty International calls on the Polish authorities to implement the following recommendations in order to fulfil their obligations under international and regional human rights law to ensure protection from discrimination.

ON THE AMENDMENT OF THE EXISTING HATE CRIME LEGISLATION

Recommendations to the government of Poland

1. The government should draft and introduce into Parliament a legislative proposal in order to ensure that:
 - a. the list of protected characteristics included in Article 119 is an open-ended list and, as a minimum, explicitly includes age, disability, gender, gender identity, sexual orientation and social or economic status as protected characteristics;
 - b. the notion of “incitement to hatred” under Article 256 of the Criminal Code is narrowly construed so that only to the most severe instances of advocacy of hatred constituting incitement to discrimination, hostility or violence as set out in Article 20.2 of the International Covenant on Civil and Political Rights are prosecuted; and extend the scope of this provision to an open-ended list of protected characteristics, which, as a minimum, should also include age, disability, gender, gender identity, sexual orientation and social or economic status;
 - c. the offence of “discriminatory insults” (Article 257), which does not reach the threshold established by Article 20.2 of the ICCPR, is removed from the Criminal Code;
 - d. any discriminatory motive associated with any other violent offence under Polish Criminal law is fully investigated and taken into account in the prosecution and trial of suspects and reflected in court records.

Recommendations to the Parliament (National Assembly) of Poland

2. The Parliament should adopt a legislative proposal aimed at amending the current provisions on hate crime as outlined by recommendation 1a, b, c and d.

Recommendations to the European Union

3. Review Framework Decision 2008/913/JHA and ensure that any revised instrument prohibits all violent crimes motivated by discrimination on any of the prohibited grounds, including age, disability, gender, gender identity, sexual orientation and social or economic status. Such a revised instrument should explicitly require states to identify any alleged discriminatory motive associated with a crime in the course of the investigation and to take any such motive into account in the prosecution of suspects.
4. In the context of the monitoring of the implementation of Framework Decision 2008/913/JHA, raise concerns on the legislative gaps concerning racist and xenophobic hate crimes in Poland,

in particular the fact that there is no provision in Polish law on the basis of which a racist or xenophobic motive can be fully taken into account in the prosecution and trial of suspects if associated with offences other than the ones set out in Articles 119, 126a, 256 and 257 of the Criminal Code.

ON THE AMENDMENT OF OTHER PIECES OF LEGISLATION

Recommendations to the government of Poland

5. Draft and introduce into Parliament a legislative proposal that would remove other criminal prohibitions on expression not reaching the threshold established by Article 20.2 of the ICCPR, notably Articles 212, 216 and 196 of the Criminal Code which respectively criminalize defamation, insult and hurting religious feelings.
6. Draft and introduce into Parliament a legislative proposal that would amend the Act on the implementation of certain provisions of the European Union on equal treatment of 3 December 2010 so that discrimination on any grounds, including age, disability, gender, gender identity, sexual orientation and social or economic status, is prohibited in all areas of life including education, access to goods and services, housing, health and social protection.

Recommendations to the Parliament (National Assembly) of Poland

7. Adopt the legislative proposals outlined by recommendations 5 and 6.

ON OTHER POLICIES AIMED AT COMBATING HATE CRIME

Recommendations to the government of Poland

8. Condemn hate crimes when they occur and make clear that crimes targeting people for discriminatory reasons will not be tolerated.
9. Ensure that investigating authorities are required to investigate any discriminatory motive when it is alleged by victims or on their own initiative when there is reason to believe discrimination may have played a role.
10. Ensure that comprehensive data on hate crimes is collected at all levels, including reporting, investigation, prosecution and sentencing. Data should be disaggregated by protected ground and proactively made publicly accessible (taking into account privacy considerations). This data should also be disaggregated according to whether the perpetrator is a private individual or a state actor.
11. Ensure that investigations into allegations of criminal misconduct by law enforcement officials, including towards foreign nationals or members of minorities, are conducted in a prompt, thorough, independent and impartial manner.
12. Design and carry out a broad-based victimization survey to assess the extent to which hate crimes may be underreported, or not recorded, and why.
13. Ensure the regular review of data from victimization surveys, as well as data on reported, investigated and prosecuted hate crimes to inform action plans for better detection and

prevention of hate crimes as well as other public policy measures to prevent and protect against discrimination.

14. More generally, public officials should speak out against and challenge negative stereotypes of particular groups and mobilize public opinion against discrimination on any grounds. Selection and training of public officials, particularly in the law enforcement and justice sectors, should ensure that in the performance of their duties their conduct is not in any way discriminatory, either directly or indirectly. Discriminatory behaviour by public officials, should not be tolerated, and any use of derogatory racist or other discriminatory language by them should be addressed with the strongest disciplinary measures.

Recommendations to the Minister of the Interior

15. Develop and implement guidelines for police officers on investigating hate crimes.
16. Define “discriminatory incident” for the purposes of police reports and statistical records of reported crimes as “any incident which is perceived to be discriminatory by the victim or any other person”.
17. Ensure that all officers who are likely to come into contact with victims receive adequate training to increase awareness of the needs of victims and to enable them to deal with victims in professional manner.

Recommendations to the Prosecutor’s Office

18. Ensure that all efforts are made to unearth any discriminatory motive, including those regarding grounds not currently explicitly prohibited by Polish criminal law, in the course of criminal investigations.
19. Instruct investigators to investigate any discriminatory motive, including those regarding grounds not currently explicitly prohibited by Polish criminal law, when it is alleged by victims, or on their own initiative when there is reason to believe discrimination may have played a role.
20. Bring alleged discriminatory motives to the attention of the court by mentioning them in the indictment when there is sufficient evidence to do so.
21. Collect disaggregated data on allegations of hate crimes perpetrated by police officers and other state actors, including data on reporting, investigation, prosecution and sentencing. Data should be disaggregated by protected ground, and proactively made publicly accessible (with due regard to considerations of privacy).

Recommendations to the police

22. Promptly register any report concerning alleged hate crimes, as well as any other crime, and inform the prosecuting authorities without any undue delay so that an impartial, adequate and thorough investigation can be initiated.
23. Register all the elements concerning a crime mentioned by victims or witnesses at time of reporting, including any discriminatory motive alleged by victims or witnesses or if there is any other reason to believe that discrimination may have played a part in the crime.

24. Ensure that discriminatory motives are always highlighted in police reports and that all discriminatory incidents are recorded for the purposes of public statistics. This could be achieved either through the introduction of separate “Discriminatory Incident Forms” or by providing for a designated section on standard police report forms.

APPENDIX 1: HATE CRIMES – RELEVANT INTERNATIONAL STANDARDS

Hate crimes target people because of their real or perceived links to a group defined by characteristics such as age, disability, ethnicity, gender, gender identity, race, sexual orientation and social or economic status. They constitute a form of discrimination because the target is chosen on the basis of personal characteristics that constitute protected grounds under international human rights law.⁹⁷

Hate crimes implicate a number of human rights, which are protected under international and regional law binding on Poland. These include the right to be free from discrimination as well as the right to life, physical integrity, and the right to be free from torture and other ill-treatment.

The **International Covenant on Civil and Political Rights (ICCPR)** requires states to respect and protect human rights without discrimination.⁹⁸ States must respect these rights and must prevent, investigate, punish and ensure redress for any human rights violations by state officials, but must also exercise due diligence to prevent, investigate, punish, and redress the harm of human rights abuses by non-state actors (that is, private individuals or groups).⁹⁹

The **International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD)** requires states parties to guarantee, without discrimination, “[t]he right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.”¹⁰⁰

The international **Convention on the Rights of Persons with Disabilities (CRPD)** requires states to combat all forms of violence, exploitation and abuse against persons with disability. In particular:

⁹⁷ Discrimination is “any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”, Human Rights Committee, General Comment No. 18, para 7.

⁹⁸ ICCPR, Article 2(1) and Article 26.

⁹⁹ The UN Human Rights Committee, the body charged with interpreting and monitoring the implementation of the ICCPR, has emphasized that: “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.” Human Rights Committee, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para 8.

¹⁰⁰ ICERD, Article 5(b). Poland ratified the ICERD in 1968.

“States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects”.¹⁰¹

The **Council of Europe’s Convention on Combating and Preventing Violence against Women and Domestic Violence** requires states to adopt legislative measures to combat all forms of violence against women including domestic violence and gender-based violence (Article 12.2). According to the Convention, gender-based violence against women “shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3d).

At the regional level, the **Charter of Fundamental Rights of the European Union** protects the rights to life, to physical integrity and to be free from torture and ill-treatment and prohibits discrimination “on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.”¹⁰² These rights are also protected by the **European Convention on Human Rights (ECHR)**.¹⁰³

INVESTIGATING HATE CRIMES

The **European Court of Human Rights** has in a series of judgments examined the obligations of states regarding the investigation of hate crimes.¹⁰⁴ In the case of *Abdu v. Bulgaria*, the Court held that:

[w]hen investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person’s ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights. A failure to make a distinction in the way in which situations which are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention.”¹⁰⁵

In the case of *Identoba and Others v Georgia*, the European Court found that the failure on the part of Georgian authorities to prevent threats and discriminatory speech from counter-protesters against LGBTI people in the context of a peaceful gathering amounted to a violation of their right to be free from degrading treatment. The Court also established that the authorities had failed to conduct an

¹⁰¹ Article 16.1 of the CRPD.

¹⁰² Charter of Fundamental Rights of the European Union, Articles 2, 3, 4 and 21.

¹⁰³ ECHR, Articles 2, 3, 5, 14. Poland ratified the ECHR in 1993.

¹⁰⁴ See, for example, *Nachova and others v. Bulgaria*, Apps. Nos. 43577/98 and 43579/98, para 160 (citing Chamber decision, paras 157-8), 2005; *Stoica v Romania* (application no. 42722/02), 4 March 2008; *Secic v Croatia* (application no. 40116/02), 31 May 2007; and *Abdu v Bulgaria* (application no. 26827/08), 11 March 2014.

¹⁰⁵ European Court of Human Rights, *Abdu v Bulgaria* (application no. 26827/08), 11 March 2014.

adequate investigation into the allegations of ill-treatments filed by the thirteen applicants insofar as they had not duly taken into account the discriminatory motive (Article 3 of the European Convention of Human Rights). The Court highlighted that:

"[...]The necessity of conducting a meaningful inquiry into the discrimination behind the attack on the march of 17 May 2012 was indispensable given, on the one hand, the hostility against the LGBT community and, on the other, in the light of the clearly homophobic hate speech uttered by the assailants during the incident. The Court considers that without such a strict approach from the law-enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence to or even connivance with hate crimes".¹⁰⁶

PROVIDING REMEDIES TO VICTIMS

International standards require states to ensure adequate reparation to victims of crime. This should not only include restitution but also compensation, rehabilitation, access to justice and redress. The **UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**¹⁰⁷ and the **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Declaration)**¹⁰⁸ calls on states to ensure victims of crime have access to the mechanisms of justice and redress; reparation for the harm suffered, including fair and just compensation; and material, medical, psychological and social assistance.

The **UN Handbook on the Use and Application of the Declaration** defines the goals of victim assistance programmes: "assist victims in dealing with emotional trauma, participating in the criminal justice process, obtaining reparation and coping with problems associated with the victimization." These programmes should include a wide range of services including long-term counselling and mental health intervention in response to trauma.¹⁰⁹

Support services should be provided to victims at all stages of the criminal justice process: during and after the investigation and any legal proceedings. States should ensure that victims have access to information of relevance to their case, be advised of their rights and how to access them and be informed about the progress of the investigation.¹¹⁰ They should be provided with assistance and, when appropriate, protection both throughout such proceedings and after them. The views and

¹⁰⁶ European Court of Human Rights, *Identoba and Other v Georgia* (application no. 73135/12), 12 May 2015.

¹⁰⁷ See the UN Principles and Guidelines, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>, last visited 6 August 2015.

¹⁰⁸ A/RES/34/40, available at <http://www.un.org/documents/ga/res/40/a40r034.htm>, last visited 6 July 2015.

¹⁰⁹ *Handbook on Justice for Victims, on the use and application of the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power*, p16, available at https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf, last visited 6 August 2015.

¹¹⁰ Council of Europe Committee of Ministers Recommendation to member states Rec (2006)8 on assistance to crime victims, para 6.

concerns of victims should be presented and considered at appropriate stages of the proceedings in a manner that is consistent with the rights of the accused to a fair trial.

Under the **European Convention on the Compensation of Victims of Violent Crimes**, victims who sustain serious bodily injury or impairment of health directly attributable to an intentional crime of violence, or the dependants of persons who have died as a result of such crimes are entitled to compensation that covers, depending on the case, at least loss of earnings, medical and hospitalization expenses and funeral expenses and, as regards dependants, loss of income.¹¹¹

Directive 2012/29/EU of the European Parliament and the Council establishes a comprehensive set of rights for all victims of crimes. These include the right to receive information (Articles 4 and 6); the right to interpretation and translation when making a complaint (Article 7); the right to receive support services including psychological counselling (Article 9); and the right to participate in criminal proceedings including the right to review a decision not to prosecute suspects (Articles 10-17). The Directive also recognizes that victims of hate crimes may need special protection measures because of the harm associated with hate crimes and the high risk of repeat victimization (Article 22.3).¹¹²

¹¹¹ Poland has not signed the Convention. The Convention was opened to signature in 1983 and entered into force in 1988.

¹¹² Article 22§3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

APPENDIX 2: POLISH CRIMINAL PROVISIONS

Article 119§1 of the Criminal Code

Whoever uses violence or makes unlawful threat towards a group of person or a particular individual because of their national, ethnic, racial, 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 3 months and 5 years.

Article 126a

Whoever publicly incites the acts described in art. 118, 118a, 119 par. 1, art. 120-125 or publicly condones the acts specified in these articles shall be subject to the penalty of deprivation of liberty from 3 months to 5 years.

Article 256

§ 1 Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for reason of lack of any religious denomination shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 2 The same penalty applies to whoever distributes, produces, records or imports, purchases, stores, owns, presents, carries or transfers prints, recordings or other items with contents specified in § 1 or items serving as media of fascist, communist or other totalitarian symbols.

§ 3 The prohibited act specified in § 2 is not a crime when performer as part of artistic, educational, scientific or collectors activity.

§ 4 In the event of conviction for the crime specified in § 2, the items named in § 2 are forfeited whether or not they are property of the culprit.

Article 257

Whoever publicly insults a group within the population or a particular person because of his national, ethnic, race or religious affiliation or because of his lack of any religious denomination or for these reasons breaches the personal inviolability of another individual shall be subject to the penalty of deprivation of liberty for up to 3 years.

APPENDIX 3: OFFICIAL DATA ON HATE CRIMES

Chart 1. Data from the Human Rights Protection Team		
Ground/Year	2014	2013
Overall number of cases	315	175
Race, ethnicity, nationality (including anti-Semitism)	223	92
Religion	14	25
Political ideology (Promoting Totalitarianism)	67	40
Sexual orientation	7	8
World-view/political affiliation	3	10
Other	1	
Type of offence		
Violence against individuals	45	34
Incitement to hatred or violence or discriminatory insults	251	105
Damage to property, arsons	15	24

Threats	3	2
Other	2	10

Chart 2. Data from the Office of the Prosecutor General						
	2014			2013		
	Investigations	Indictments	Courts' decisions	Investigations	Indictments	Courts' decisions
Total	1365 (Of which 1062 newly initiated)	154	137 (107 convictio ns-147 people convicted)	835 (Of which 719 newly initiated)	111	61 53 convictions (87 people)
Race, ethnicity, nationality	593	105	n.a.	294	54	n.a.
Religion	466 (Jews:207, Muslims: 188)	23 (Jews: 12, Muslims 5)	n.a.	317 (Jews:199, Muslims: 85)	25 (Jews: 22, Muslim: 1)	n.a.
Type of offence						
Violence against individuals (Article 119§1 CC)	156*	41	n.a.	102*	28	n.a.
Incitement to hatred or violence (Article 256 CC)	803*	43	n.a.	498*	30	n.a.

Discriminatory insults (Article 257 CC)	720*	101	n.a.	332*	68	n.a.
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*The sum of the investigations disaggregated by article of the Criminal Code is larger than the overall amount of investigations per year as one investigation can be opened on the basis of one or more articles of the Criminal Code.

APPENDIX 4: AMNESTY INTERNATIONAL'S CHECKLIST ON HATE CRIMES

How do governments respond to hate crimes, including homophobic and transphobic hate crimes?

The Amnesty International checklist can help you identify if the current laws, policies and practices need to be reformed, or if there are any obstacles that are blocking the implementation of these policies. You can go through these seven questions to assess the situation in your country:

- Is the existing legislation adequate?
- Are reporting mechanisms appropriate?
- Are hate crimes investigated effectively and thoroughly?
- Are hate crimes prosecuted effectively?
- Are victims given appropriate medical, psychological and legal support?
- Are there effective training programs to raise awareness of hate crimes for law enforcement authorities, judicial authorities and health professionals?
- Is there an official, public and efficient hate crime data collection system?

1) Legislation on hate crimes

A hate crime is any criminal offence that is perpetrated against a person or a property *chosen* by the offender because of the real or perceived association with a group defined by a protected characteristic (such as ethnic origin, religion, sexual orientation or gender identity).

- ✓ Does legislation in your country prohibit all forms hate crimes?
- ✓ Does legislation in your country include an open list of protected characteristics in the list of hate motives on the basis of which a criminal offence can be perpetrated?

2) Reporting hate crimes effectively and appropriately

The police must register any alleged hate motive associated with a crime (this might be either on the basis of the victim's perception or on their own belief that the crime reported was a hate crime). The police must also avoid inconsistencies in the classification of hate

crimes.

✓ Are there guidelines or protocols requiring the police to register any alleged hate motive associated with a crime?

✓ Are there clear guidelines to ensure that hate-motivated crimes are classified consistently?

3) Investigating hate crimes thoroughly

Every investigation must comply with the principles of due diligence and effectiveness. The investigation should unmask any alleged hate motive behind the crime, whether or not this motive has been reported by the victim.

✓ Do investigating authorities conduct their investigations in a timely manner and explore all relevant evidence in order to identify the suspects of hate crimes?

✓ Are there protocols or guidelines requiring authorities to thoroughly investigate any alleged hate motive associated with a crime?

4) Prosecuting hate crimes effectively

The prosecuting authorities have to make efforts to bring suspects to justice on the basis of the results of the investigation. Prosecutors should bring any alleged hate motive to the attention of courts when sufficient evidence is established by the investigation.

✓ Do the prosecuting authorities use all the powers available to them to prosecute the suspect in a timely manner?

✓ Do they mention any alleged discriminatory motive when pressing charges against suspects of hate crimes?

5) Supporting victims and protecting their rights

States must ensure that all victims of hate crime have access to medical care, counseling, consular assistance and legal advice, and that victims have effective access to justice.

✓ Do health services provide adequate care, including psychological counselling, to victims of hate crimes?

✓ Do health services refer victims of hate crimes to other appropriate services, such as legal services, or those dealing specifically with their situation, including those for migrants or sex workers?

✓ Are victims informed promptly and in detail – in a language they understand – of the progress of the investigations and prosecution, as well as of their rights, including the right to be heard in the legal proceedings?

✓ Are victims heard in the legal proceedings?

6) Combating prejudice in institutions

States must adopt policies that actively promote and encourage inclusion, non-discrimination and respect for diversity. The police, judicial authorities and health professionals should be trained to deal with hate crimes and to provide adequate support to victims of these crimes. Public officials and political leaders must play a leading role in raising awareness of human rights and non-discrimination.

- ✓ Are there training programs for the police, judicial authorities and health professionals aimed at raising their awareness of human rights, discrimination and hate-motivated crimes?
- ✓ Do public officials and political leaders firmly condemn all forms of hate crime and discrimination?

7) Collecting official data on hate crime

States must collect comprehensive data and statistics on hate crime.

- ✓ Are official data and statistics on hate crimes collected at different levels, including data on numbers of crimes reported to the police, number of investigations opened, number of investigations that lead to a prosecution and number of convictions?
- ✓ Are data and statistics disaggregated by the type of crime and the associated hate motive?
- ✓ Are data and statistics adequately taken into account when authorities design policies to fight hate crimes?
- ✓ Are data and statistics available to the public?



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TARGETED BY HATE, FORGOTTEN BY LAW **LACK OF A COHERENT RESPONSE TO HATE CRIMES** **IN POLAND**

Every year, hundreds of people in Poland become the victims of beatings, harassment and other crimes simply because of their identity or their belonging to a certain minority group. These hate crimes are a form of discrimination, have a pernicious and long-lasting impact on victims and communities and require a coherent and thorough response from policy makers, law enforcement officials and the criminal justice system.

Polish legislation specifically provides for the investigation and prosecution of hate crimes motivated by race, ethnicity, nationality, religion and political affiliation. But it does not establish that age, disability, gender, gender identity, sexual orientation and social or economic status are also grounds to investigate and prosecute hate crime.

This two-tier system to address hate crimes in Poland has no objective justification and discounts international and European human rights law, which equally prohibits racial and ethnic discrimination as well as discrimination on all the grounds listed above.

Polish authorities should amend the Criminal Code to ensure that crimes motivated by discrimination on any grounds, including age, disability, gender, gender identity, sexual orientation and social or economic status, are investigated and prosecuted as hate crimes.

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