

## **XENOPHOBIA AND ETHNIC DISCRIMINATION IN POLAND – OUTLINE OF THE SITUATION**

### **The attitude of Poles towards people of different ethnic origin**

Poland remains an ethnically homogeneous country. According to the census results, in 2002 the population of Poland was 38,230,000 people, out of which 96.74% declared Polish nationality. The remaining 3.26% are the people belonging to ethnic and national minorities, foreigners or migrants. However, following the Poland's accession to the EU the number of foreigners and migrants settling down in Poland has been on the rise.

For almost twenty years, the Public Opinion Research Center (CBOS) Centre has been conducting surveys on the attitude of Poles towards other nations. The surveys' results from the last year suggest that the level of declared national xenophobia is declining; Poles tend to voice sympathy rather than aversion towards the members of other nations. The most liked nations include the Irish, the English, Czechs, Frenchmen and Italians. Much less sympathy or even dislike is directed towards Turks, Romanians and the Roma as well as the Arabs – treated as a separate category. There is also a general tendency that the representatives of highly developed countries – USA and the members of the “old” European Union – are being liked the most, while poorer nations are far less popular.<sup>1</sup>

The results of the research carried out by the Public Opinion Research Center are reflected in everyday life. Foreigners or migrants from the “rich West” usually do not encounter intolerance from Poles. They can easily rent a flat, are not refused entrance to a club or café, which sometimes happens to the newcomers from the East. It is also easier for them to find employment. As far as job seeking is

<sup>1</sup> CBOS, *Sympatia i niechęć do innych narodów. Komunikat z badań*, September 2007, available at [http://www.cbos.com.pl/SPISKOM.POL/2007/K\\_144\\_07.PDF](http://www.cbos.com.pl/SPISKOM.POL/2007/K_144_07.PDF)

concerned, the country of origin is of greater importance than personal appearance – people of African origin holding a “Western” passport do not have problems with finding a job, contrary to the citizens of African countries.<sup>2</sup> Yet in the case of racist incidents such as physical and verbal taunts, distinctive appearance is a determining factor. The victims are usually people whose appearance indicates African or Asian origin. The dislike towards the Roma is also noticeable.

## **Discrimination (?) against foreigners and migrants on the labour market**

There is a number of reasons why it is so hard to estimate the phenomenon of discrimination against foreigners. The difficulties with evaluating this problem are partly caused by the scale, and partly by the nature of the employment of foreigners and migrants in Poland. So far no research on the discrimination per se has been conducted (for instance, by means of so-called “discrimination tests”), and information on this phenomenon is obtained from accounts of individual persons or collected during studies on more general issues (the situation of foreigners/migrants, the situation of particular groups, labour market etc.). The research on discrimination is hindered by the difficulties connected with making adequate comparisons on a broader scale. Basing on the definition of discrimination as unequal treatment of persons in the same or comparable situation, it is hard to compare the situation of foreigners working in Poland illegally with the workers employed under the law, and on such grounds state whether discrimination exists or not. It is the people working off the books who constitute the most numerous group of foreigners working in Poland (usually they stay in Poland legally – on the basis of a tourist visa). In this context, it must be observed that Polish law creates – to a certain extent – favourable conditions for illegal employment: labour costs are high and the procedures for obtaining work permit by foreigners are very bothersome, even considering the changes introduced within the last year and a half to facilitate legal employment.<sup>3</sup> The costs of obtaining work permit for foreigners, borne by the employer, have been significantly decreased. Since 2007, the citizens of all member states of EU have had the right to work in Poland without permit. The procedures for taking legal work for the citizens of Russia, Belarus and the Ukraine have also been facilitated; they can work in Poland without obtaining work permit but their work time is limited: from 20 July 2007 they could work for three months during subsequent six months, while since February 2008 this period has been prolonged to six months during the subsequent year. This does

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<sup>2</sup> Cf. Jędykiewicz Magdalena, *Drogi prowadzące do osiedlenia się. Cudzoziemcy mieszkający na stałe w Polsce*, in: E. Nowicka, S. Łodziński (red.), *Kulturowe wymiary imigracji do Polski*, Warszawa 2006.

<sup>3</sup> The changes in question result from altering economic and demographic situation. Massive emigration of Poles to other EU countries and dynamic economic growth caused significant decrease of unemployment rate; still, in some sectors the workforce is dramatically scarce.

not seem to be a fully satisfactory solution. Only seasonal employees and employers can benefit from it, the remaining ones have to solve the problem of how and where to work for the rest of the year, and, as for the employees – who to fill the vacancies with. Consequently, only a relatively marginal proportion of people decided to make use of the new solution of work legalisation. From 20 July to 30 December 2007 poviats employment offices registered a total of 21 513 declarations of employers who wanted to employ workers on the basis of the regulation. Moreover, there are signals that persons who have received a visa with work permit pursuant to the declaration of a prospective employer do not reach him but after border crossing they look for another, illegal but better paid job, not requiring tax and insurance payment by the employee and employer.

At this point we reach another factor, significant – and maybe even crucial – for the evaluation of the discrimination phenomenon: the lack of awareness that one is a victim of discrimination or even consent to such situation. This regards in particular migrants from countries poorer than Poland – both those working legally and illegally. Their working and payment conditions are usually worse than those of Poles; their employee rights as well as safety regulations are not respected. However, the disparities between earnings in Poland and in their own countries are large enough for them to prefer working in Poland. Apart from that, it is the very fact of accepting lower earnings which makes some employers take on foreigners. The media occasionally raise an issue of abusing migrants and foreigners. However, such cases do not find their way to courts in connection with discrimination, and the state bodies, even if they handle any case at all, focus on the issue of employment legality or working conditions. Such was the issue with the workers from North Korea employed in the Gdańsk Shipyard who, according to press reports, were to work several hours a day in hazardous conditions and the remuneration for their work was allegedly taken over by a company acting as an intermediary. At the request of the Commissioner for Human Rights Protection, the case was investigated (twice) by the National Labour Inspectorate and the Governor of the Pomorskie Region. The investigation revealed that the Koreans had been employed legally, their remuneration had not been lower than a statutory minimum pay, and thus they had been not discriminated against. The National Labour Inspectorate only pointed out that the workers, in particular those working at heights, were not appropriately protected,<sup>4</sup> No details concerning the earnings of the Korean workers, in comparison to their Polish counterparts, are available in this case.<sup>5</sup> Observing this and other similar cases covered by the media (e.g. concerning Ukrainian employees), one can expect that such situations will take place until the employees themselves stand up for their right to equal treatment. So far however, the State Labour Inspectorate received only one complaint regarding discrimination on the

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<sup>4</sup> Information of the Commissioner for Human Rights Protection for the year 2006, pp. 137–138

<sup>5</sup> So far we have been unable to find any case in which a court or State Labour Inspectorate would rule ethnic or national discrimination.

grounds of nationality.<sup>6</sup> It was lodged by British nationals, which is even more interesting since for years the labour market situation of the Westerners has been far from any discrimination whatsoever. Foreigners from the West most often work as native speaker language teachers or as highly-qualified specialists, frequently employed in senior managerial posts.<sup>7</sup> International corporations, especially the ones operating in many different countries, readily employ staff with the knowledge of other languages and cultures. Their special skills make them desired and highly-paid employees rather than victims of discrimination. However, it appears that the situation will change in this respect due to, among other things, an increase in the number of foreigners coming to work in Poland. Lately, there have appeared individual reports on infringements of the employee rights concerning the foreigners employed by language schools whose owners take advantage of the employees' lack of understanding of the Polish language, employment law and insufficient ability to function in a new country.

In the context of the discrimination phenomenon, situation of the migrants such as the Vietnamese, Turks or Armenians should be considered separately. These nationalities, and in particular the Vietnamese, function mainly within their own communities. Usually they pursue their own businesses or work in small enterprises run by their compatriots, employing a few persons, mainly in trade and service sectors. Consequently, due to impossibility of comparison, their situation cannot be assessed from the angle of ethnic discrimination. By the way, it is worth mentioning that the foreigners of fairly good financial status generally tend to function independently and, consequently, do not use public education or healthcare.

A separate group of migrants are refugees and persons with tolerated residence permit. Although both these groups have employment permits resulting from their legal status, they have problems with finding employment. It is worth mentioning that the problems on labour market are experienced most often by the Chechens, while the refugees from African countries, though more likely to become victims of racist incidents, have significantly less problems with finding jobs and, more generally, with integrating into the Polish society.<sup>8</sup> Many of them start close relationships with Poles, which makes their functioning in Poland substantially easier. The Chechens tend rather to close themselves in their own community; as a rule, there are no close relationships between them and the Polish nationals. In the case of this group, crucial role is played by strong cultural standards regulating the status of men and women, resulting in

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<sup>6</sup> They believed that the form of employment proposed to them was discriminatory, since they were proposed a job under a contract for services (*umowa o dzieło*), not an employment contract. Having examined the case, the State Labour Inspectorate found no discrimination (source: the State Labour Inspectorate's letter no. GNP-306-079-16 received by the Helsinki Foundation for Human Rights).

<sup>7</sup> Sometimes they are employed abroad and delegated to work in Poland, thus the conditions of their work, at least with respect to remuneration, are significantly better than the ones of local employees.

<sup>8</sup> See: Katarzyna Gracz, *Przymusowe migracje a perspektywy wielokulturowości w Polsce*, in: Agnieszka Chrzanowska, Katarzyna Grach, *Uchodźcy w Polsce. Kulturowo-prawne bariery w procesie adaptacji*, Warszawa 2007.

certain behaviour towards the ability to engage in a particular type of work. Furthermore, the inability to find employment is conditioned by other factors, such as prejudices against the Chechens<sup>9</sup>, lack of command of Polish and of professional skills reflecting the requirements of the Polish labour market. The latter is tightly connected with the current situation in Chechnya, where the opportunity to gain any higher level education is practically non-existent. Considering the fact that it is the Chechens who are the majority of refugees and the persons with tolerated residence permit (about 90%), one can generally say that the situation of those groups on the labour market is very bad. The biggest problem of refugees and the persons with tolerated residence permit (apart from the unemployment) is no access to accommodation. The number of municipal flats is insufficient, and the landlords are very reluctant with regard to letting the premises to foreigners. Once again, this problem in particular concerns the persons of a Chechen origin.

## **Situation of National and Ethnic Minorities**

Among all national and ethnic minorities living in Poland, the Roma people are in the hardest situation. There is approximately ninety percent unemployment within this group, which results in poverty, lack of medical care and generally poor living conditions. The Roma are the worst educated ethnic group, either. The assistance programmes that have been implemented during recent years somehow improved the situation, but more notable results of such programmes (e.g. a raise in the employment rate) are yet to be visible. The Roma's housing conditions, especially those of the ones living in the southern Poland, are very bad. Many dwellings do not have running water and/or sewage system.

Unfortunately, there are still cases of unacceptable discrimination of the Roma people by authorities and social ostracism. For instance, the matter of the provisions of running water to the premises inhabited by the Roma in Limanowa Commune (*gmina*) has been unresolved for several years. Thanks to the funds obtained from the governmental *Programme for the Roma Community*, the Commune authorities built a pipeline. Unfortunately, the water did not flow to the flats of the Roma who were supposed to be the beneficiaries of the project. They can only use wells.<sup>10</sup> According to the information obtained in the Ministry of Interior and Administration (MSWiA), one of the obstacles to the provision of water is the legal status of some of the Roma's premises (buildings were constructed unlawfully).

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<sup>9</sup> What is interesting, the xenophobia against the Chechens results not only from their nationality or Islamic religion, but also, and probably most often, from the fact they are perceived as "the Russkys". Often they are treated in more friendly way when their interlocutors learn that they come from the Caucasus region rather than Russia.

<sup>10</sup> Ombudsman's official note, cases RPO-558281-X/07/MS and RPO-558905-X/07/MS, sent to the Helsinki Foundation for Human Rights as an annex to the letter of 8 October 2007.

Interestingly, such unlawfulness had affected neither the application for subsidies for building the water pipeline itself nor the process of granting and approving such subsidies.<sup>11</sup> In September, the MSWiA informed that, in according to declarations of local government authorities, the Roma premises would have the water in October 2007.

The second widely-publicized case of a xenophobic overtone concerned changing the place of residence of the Roma living at the borderline of two villages – Maszkowice and Jazowsko. For years the Roma dwellings were considered to be located in the area of Maszkowice village and their place of residence was registered accordingly. However, as it has lately appeared in connection with the implementation of the *Programme for the Roma Community*, the area in which the Roma lived was within the administrative boundaries of Jazowsko. The Council of Łącko Commune, within the territory of which both villages are located, decided to change the Roma's registered place of residence in accordance with the above-mentioned findings. This decision triggered vehement protests of the Jazowsko residents. They objected to it, arguing that it had been made without consulting them first. Regardless of the protests, the Council of Łącko Commune did not change its decision. In consequence, the Jazowsko village council requested Ombudsman's intervention. Representatives of the Ombudsman arrived to participate in mediations during which they explained to the residents that the change of Roma's place of residence „is of solely organisational character and does not result in the necessity to change the location of the [Roma's] dwelling itself”.<sup>12 13</sup>

As regards living conditions, the situation of the remaining national and ethnic minorities is much better. A common feature of all national minorities is the feeling of “historical” discrimination connected with still unresolved problems from the past, different for each community. This is particularly the case of the Ukrainian, Lemko, German, Latvian and Jewish minorities. The issue of compensation for or return of the seized minorities property as well as damages for repressions suffered by these minorities during the communist rule still remains unsettled. A difficult and sensitive question is protection of memorial sites such as cemeteries, graves, monuments and the problem of display of historic symbols.

Since 2005, there has been operating a Joint Commission of the Government and National and Ethnic Minorities, established under the Law on National and Ethnic Minorities and Regional Language. The Commission comprises representatives of public authorities and national and ethnic minorities. In the

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<sup>11</sup> According to information on the earmarked provision funds allocated to the *Programme for the Roma Community* available on the Ministry of Interior and Administration's website, the following subsidies were granted:

- in 2005 – PLN 90,000 (<http://www.mswia.gov.pl/portal/pl/183/2978/>)

- in 2007 – PLN 25,835 (<http://www.mswia.gov.pl/portal/pl/285/4712/> )

<sup>12</sup> Official note of the Commissioner for Human Rights Protection, cases RPO-558281-X/07/MS and RPO-558905-X/07/MS, sent to the Helsinki Foundation for Human Rights as an annex to the letter of 8 October 2007.

<sup>13</sup> The Senior Advisor for Roma and Sinti Issues (ODIHR/OSCE) also participated in the mediations; consequently, the case was also described in the ODIHR/OSCE *Field assessment report*, available at [http://www.osce.org/documents/odihhr/2007/10/27381\\_en.pdf](http://www.osce.org/documents/odihhr/2007/10/27381_en.pdf)

opinion of the minorities' representatives, despite its "joint" character, division of power within the Commission is disadvantageous to the minorities. It is also worth mentioning that to a certain extent the Commission exists only on paper, since it operates without any permanent seat or office support needed to coordinate joint actions. Considering different living addresses of particular Commission's members, they can barely cooperate. So far, the Commission's members representing the minorities have been meeting before the main session of the Commission in locations made available by friendly organisations.

## **Racial Violence**

The number of officially registered racial/nationality crimes is fairly low, even considering the still small population of persons of a different ethnic origin residing in Poland (cf. the Annex). For the last three years, the number of such crimes has remained at approximately the same level, with the exception of offences contrary to Articles 256 [and 257] of the Polish Criminal Code (insulting a person because of their ethnic origin or incitement of ethnic or racial hatred), whose number increases year by year. In 2005, 18 such offences were reported, as compared to 47 in 2006, and as many as 82 in 2008. Offences contrary to Articles 256 [and 257] are therefore statistically the most frequently committed racial crimes. Fortunately, drastic cases of racial violence such as murder, manslaughter or beatings causing grievous bodily harm are rare. It must be remembered, though, that victims of racial violence still very often do not report their cases to the police, fearing victimisation and additional problems.

According to official statistics, there is little to be said about the victims of racial offences. Using the data obtained from the Human Rights Officers of the Police, NGOs and media relations, it may be said that physical racial violence is most frequently directed at persons who stand out because of their appearance and skin colour (the Africans, Asians, Roma), while hate speech is definitely more often anti-Semitic. There are cases of the incitement of hatred against the Roma, Arabs and/or Muslims. Looking at the graffiti on walls, one can notice that individual cases of hate speech concern generally all ethnic groups (Russians, Italians, Vietnamese). In many instances, contents of the hate speech or incitement of ethnic, racial or national hatred concern all minorities altogether. The Nazi symbols and slogans must be treated in a similar way since they are directed to the all not being "true Poles".

Racial crimes are often perpetrated by the persons connected with national or even nationalistic organisations, but it is no rule. Places where racist behaviour is significantly more visible are football stadiums. Foreign players, in particular those of African origin, become victims of racist backchat (or rather screams); they are sometimes being thrown at with bananas, which is supposed to have an

additionally humiliating symbolic meaning. When discussing the racial crimes, one must note that the substantive number of such offences is committed by minors.

Analysing the effectiveness of justice system, one can notice certain positive trends: during the last few years the number of persons convicted by courts for racist crimes has been on constant rise and, at the same time, increasingly less cases are being discontinued due to the reasons other than failure to identify the perpetrators (for instance because of low social noxiousness of the offence). Notwithstanding the above, many perpetrators of racial crimes, especially the crimes consisting in propagation of the Nazi ideology and incitement of hatred, still remain undetected.

## **Anti-discrimination Laws**

The Polish law only partly conforms to the EU standards concerning counteracting ethnic discrimination. Despite the obligations resulting from the membership in the European Union, Poland failed to implement all the recommendations contained in the Council Directive 2000/43/EC (the so-called *Racial Equality Directive*). Currently, Polish laws are more or less in compliance with the European recommendations only with respect to counteracting discrimination in the area of employment, while the Directive provides for anti-discrimination protection in the following spheres of life: employment, education, welfare (including social and health assistance), access to the publicly available goods and services (including housing), membership and engagement in employees or employers organisations. No special institution promoting the principle of equal treatment of all persons regardless of their racial or ethnic origin has yet been created in Poland. In accordance with the Directive, the tasks of such an institution should comprise of conducting independent research on discrimination, publishing independent reports and formulating recommendations as well as providing assistance to the victims of discrimination.

In July 2007, the European Commission called all EU Members who had failed to implement the recommendations of the Racial Equality Directive (2000/43/EC) to their domestic laws or had done the same only to a limited extent, to fill the loopholes in this respect.<sup>14</sup> In the case of Poland, the Commission emphasised, among other things, the issue of limiting the discrimination prohibition only to the area of employment, lack of definition of “victimisation” in the context of discrimination and too many exceptions from the discrimination prohibition principle. If a member state fails to comply with such recommendations, the Commission will bring the case before the European Court of Justice.

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<sup>14</sup> Apart from Poland, the Commission warned 13 other Member States: Spain, Sweden, Czech Republic, Estonia, France, Ireland, the UK, Greece, Italy, Latvia, Portugal, Slovenia and Slovakia.

## Decisions issued by the Supreme Court in 2007

In 2007, the Supreme Court ruled in two cases relating to the issue of xenophobia and national discrimination. The first case concerned incitement of hatred based on nationality/religion, the second – employment discrimination because of the nationality criterion. Both events are worth emphasizing for a number of reasons. Firstly, such cases rarely reach the courts, especially in the case of higher judicial bodies (Supreme Court, Constitutional Tribunal). According to the information obtained from the Bureau of Studies and Analysis, the example described below is probably the only case on ethnic discrimination that has ever been brought before the Supreme Court. On the other hand, the second case mentioned concerns incitement of hatred, an offence that (together with the propagation of Nazi ideology) is a racist crime most often committed in Poland and the number of such acts reported grows each year. Moreover, taking into account the traditional status of the Supreme Court decisions within the system of judicial practice, one may expect that those decisions will influence the judgements rendered in the future by the courts of lower instances.

In the first of the aforementioned cases the Supreme Court held on the issue of the criteria of the offence of incitement of hatred on the basis of national, ethnic or racial differences (Article 256 of the Criminal Code) and protection of freedom of speech relating thereto.

The case concerned alleged incitement of hatred conducted by raising a placard reading “*We shall liberate Poland from Euro-traitors, Jews, Masons and governmental mafia*” during the celebration of the National Independence Day. The courts of the first and second instance held that this conduct had not satisfied the criteria of the offence under Article 256 of the Criminal Code. In consequence, the State (represented by the prosecutor) lodged an extraordinary appeal (*kasacja*) to the Supreme Court which dismissed the same, approving the assessment made by the inferior courts.

In their judgements the courts considered the defendant’s conduct during the manifestation as well as lexical and grammatical analysis of the term “to liberate”. These two elements were to indicate the intentions of the defendant. The issue of establishing defendant’s intention is crucial in this case since, according to the Supreme Court’s argument, “*the offence contrary to Article 256 is of intentional nature and as such can be perpetrated only if the defendant acts purposefully and aiming at the effect of a special kind, thus with a specific intent (dolus directus coloratus)*”. The courts of the first and second instance determined that, apart from carrying the placard, the defendant had not expressed himself in any other way (verbally or by gestures). The Court argued that both the lexical definition of the verb “to liberate” (*wyzwolić*) and its grammatical form used (indicative rather than imperative form of the future tense used), had not indicated any intention to elicit (incite) hatred based on national differences. In connection with

the above, it was decided that the defendant had not incited hatred, but merely expressed his own opinions, which he can lawfully do under Article 54 (1) of the Constitution of the Republic of Poland.<sup>15</sup>

In the second case – concerning discrimination at the place of work – the Supreme Court expressed their opinion as to whether differentiating employees because of their skills resulting from their nationality/citizenship is an illegal differentiating on the basis of nationality, contrary to the Polish Labour Code.

The case was initiated by a claim of the three Poles who had been working as cashiers at a petrol station in Z. (Poland). The employer laid them off and subsequently hired some Germans who took their jobs for higher pay. The Poles brought the matter before the court requesting damages from the employer on the basis of infringement of the principle of equal employee rights and the prohibition of discrimination in employment. The claimants (and later appellants) argued that their discrimination/unequal treatment had been caused by their nationality, as the Germans had been treated better than Poles. In the opinion of the claimants, apart from remuneration and nationality of employees, the elements of the German and Polish workers' employment relationships was identical. On the other hand, the employer argued that the scope of duties of the former and new employees had not been identical and that the linguistic and cultural competences of the German employees amounted to higher competences. Since the courts of the first and second instance had dismissed their claims, the appellants brought an extraordinary appeal to the Supreme Court.

In considering the case, the Supreme Court based its decision on the factual findings of the inferior courts as well as the interpretation of the constitutional principle of equal treatment given in earlier decisions of the Supreme Court and Constitutional Tribunal. Pursuant to this principle, employees have the right to equal pay for equal work or the work of equal value, while the latter is deemed to be the work whose performance requires comparable qualification, responsibility and effort of the employees. It is allowed to differentiate employees' rights who either perform different duties or, while performing the same duties, perform them in a different way. The principle of equal treatment does not exclude possibility of differentiation of employment rights and duties; on the contrary, it explicitly provides for differentiating the employees' situation due to dissimilarities resulting from personal traits and differences in performance of the work. Differentiation of the employees' situation will be illegal only if based solely on an illegal criterion (such as nationality) applied by an employer. Consequently, in the discussed case the courts examined whether the Polish and German employees had been in the same situation and whether employer's differentiation was still allowed or illegal.

In its comprehensive examination, the Court considered a number of factors, such as the level of pay received by the Poles and Germans, offered both by the employer in particular and in both countries in

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<sup>15</sup> Ruling (*postanowienie*) of the Supreme Court of 5 February 2007, docket no. IV KK 406/06.

general, as well as the moment of hiring the individual employees. The Court held that the employer is under no obligation to provide newly employed employees with the same remuneration as the employees previously employed (i.e. the laid off employees).<sup>16</sup> In turn, wages in Germany are higher than in Poland, therefore the employer willing to hire German employees had to offer them an appropriately higher remuneration. The Court also recognised the employer's right to select employees who meet its expectations to the highest extent possible. According to the defendant employer, its company works mainly with German customers, hence linguistic and cultural competences of the German employees constituted additional desired qualifications needed to serve and acquire German customers. Therefore, the Court did not find any illegal discrimination and dismissed the appeal.<sup>17</sup>

Considering all circumstances of the case, such as different time of hiring the employees, it is hard to challenge the exhaustive assessment of the Supreme Court and its decision to dismiss the appeal. However, the issue of higher qualification of employees resulting solely from their nationality itself may arouse controversy, since no evidence was given that the new German employees actually contributed to an increase of the company's sales. The assumption that German customers prefer to be served by the Germans is a projection of the employer assuming peculiar xenophobia of the customers. Following such reasoning, one can justify all cases in which a person of a different ethnic origin is denied employment because, for instance, it has been assumed that the customers or other employees prefer to work with ones of their kind rather than persons representing less liked nationalities.

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<sup>16</sup> In this case, Polish and German employees worked together for a short time of the so-called notice period.

<sup>17</sup> Prepared on the basis of the Supreme Court Judgement dated 5 October 2007, docket no. II PK 14/07.

## Annex 1 – Selected statistics concerning racial, ethnic, national and religious hate crimes

1. Reported offences – own study prepared on the basis of the data from *Temida* police and prosecutor statistic system.

Year	<i>Offences against freedom of conscience and religion, according to individual Articles of the Criminal Code</i>			<i>Offences committed on the basis of race/nationality, according to individual Articles of the Criminal Code</i>			
	Article 194	Article 195	Article 196	Article 118	Article 119	Article 256	Article 257
2007	0	17	57	<i>No data</i>	<i>No data</i>	82	33
2006	1	22	38	0	12	47	35
2005	0	16	88	0	16	18	34
2004	2	25	44	0	6	14	22
2003	1	44	32	0	3	14	17
2002	1	15	44	1	8	8	17
2001	1	12	56	1	5	11	17
2000	0	17	145	0	9	28	16
1999	1	23	59	3	9	12	20

2. Results of proceedings in cases of racist offences – own study prepared on the basis of the data from *Temida* police and prosecutor statistic system and the data provided by the Ministry of Justice

Year	Number of offences (Articles 118, 119, 256, 257)	Result of the proceedings		
		Request for an indictment	Request for discontinuation due to failure to identify the perpetrators	Referral to the Family Court
2006	94	47%	34%	19%
2005	68	71%	21%	7%
2004	42	64%	31%	5%
2003	34	62%	29%	9%
2002	34	71%	24%	6%
2001	34	53%	29%	18%
2000	53	45%	34%	21%
1999	44	68%	23%	9%

3. Convictions for racial crimes and conditional discharges – own study prepared on the basis of the National Criminal System data provided by the Ministry of Justice

Year	No. of convictions	Conditional discharges
2006	35	0
2005	22	0
2004	18	4
2003	20	3
2002	14	1
2001	22	3
2000	20	10
1999	23	12

## Annex 2. Racist crimes – extract from the Criminal Code

Art. 118.

§ 1. Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group;

shall be subject to the penalty of deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever, with the intent specified under § 1, creates, for persons belonging to such a group, living conditions threatening its biological destruction, applies means aimed at preventing birth within this group, or forcibly removes children from persons constituting it;

shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

Art. 119.

§ 1. Whoever uses violence or makes unlawful threats towards a group of persons or a particular individual because of their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs;

shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same punishment shall be imposed on anyone who incites commission of the offence specified under § 1.

Art. 194.

Whoever restricts another person from exercising the rights vested in the latter, for the reason of this person's affiliation to a certain faith or religious indifference;

shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

Art. 195.

§ 1. Whoever maliciously interferes with a public performance of a religious ceremony of a church or another religious association with regulated legal status 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 punishment shall be imposed on anyone who maliciously interferes with a funeral, mourning ceremonies or rites.

Art. 196.

Whoever offends the religious feelings of other persons by outraging in public an object of religious worship or a place dedicated to the public celebration of religious rites;

shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

Art. 256.

Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, race or religious differences or for reasons 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.

Art. 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.