

# C.O.N.T.A.C.T.

## Desktop research results

### Poland

## Annex 1. Definition of hate crime (including hate speech)

Legal provisions, definitions and interpretations

1. Relevant instruments of international law that oblige Poland to circumscribe the bounds of free expression and to counteract „hate speech”

| Country | Law  | Ratification date for Poland | Declarations  |
|---------|--|------------------------------|---|
| Poland  | European Convention on Human Rights (ECHR) | 19 January 1993              | Poland joined a collective system of human rights protection based on the rules set forth in the Universal Declaration on Human Rights adopted by the United Nations General Assembly on 10 December 1948. On the basis of the ECHR, persons alleging a violation by Poland of their rights set forth in the Convention may lodge applications with the European Court of Human Rights. |

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|  | International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) | 05 December 1968 | ICERD was ratified by General Assembly resolution 2106 (XX) of 21 December 1965 (entry into force 4 January 1969). Poland as a state party is obliged to submit regular reports to the CERD (The Committee on the Elimination of Racial Discrimination ) on the implementation of its recommendations.                                 |
|  | International Covenant on Civil and Political Rights (ICCPR)                              | 18 March 1977    | ICCPR was ratified by General Assembly resolution 2200A (XXI) of 16 December 1966 (entry into force 23 March 1976). As a state party Poland is obliged to submit regular reports to the Human Rights Committee on how the civil and political rights are being implemented.<br>Up to now Poland has ratified 13 Human Rights treaties. |

## 2. Legal provisions in the Polish justice system:

Polish law doesn't contain any particular provision defining "hate speech" and "hate crime"; however, there exist a number of general and anti-discriminatory laws that enable to identify the hate speech phenomenon and hate crime. These laws are contained in the

Constitution of Poland<sup>1</sup>, the Criminal Code of Poland,<sup>2</sup> and the Civil Code.<sup>3</sup> Additionally, provisions concerning equal treatment are determined in the Labour Code of Poland<sup>4</sup> as well as several additional acts (see the table below).

| Country | Paragraph                      | Content / Comments  |
|---------|--------------------------------|---|
| Poland  |                                | The Constitution  |
|         | Article 13 of the Constitution | Article 13 of the Constitution prohibits political parties and other organizations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership. |
|         | Article 30 of the Constitution | The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.  |
|         | Article 32 of the Constitution | 1.All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.<br>2.No one shall be discriminated against in political, social or economic life for any reason whatsoever.   |
|         | Article 35 of the              | 1.The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to   |

<sup>1</sup> The Constitution of The Republic of Poland as adopted by the National Assembly on 2<sup>nd</sup> April 1997

<sup>2</sup> The Criminal Code of 6<sup>th</sup> of June 1997 (Journal of Laws No. 88, item 553 with later amendments)

<sup>3</sup> The Civil Code of 23<sup>rd</sup> April 1964 (Journal of Laws No. 16, item 93, with later amendments)

<sup>4</sup> The Labour Code of 23<sup>rd</sup> December 1997 (Journal of Laws No. 21, item 94, with later amendments)

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|  | Constitution                     | <p>develop their own culture.</p> <p>2.National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.</p>  |
|  | The Criminal Code                |   |
|  | Article 118 of the Criminal Code | <p>1. Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.</p> <p>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 births within this group, or forcibly removes children from the persons constituting it, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.</p> <p>3. Whoever makes preparation to commit the offence specified under § 1 or 2, shall be subject to the penalty of the deprivation of liberty for a minimum term 2 of 3 years.</p> |
|  | Article 119 of the Criminal Code | <p>Article 119 makes anyone found guilty of using violence or lawless threat towards a group or a particular person because of national, ethnic, racial, political, or religious affiliation or because of the lack of any religious denomination liable to imprisonment for the period from 3 months up to 5 years. The same penalty is determined for anyone who publicly incite others to committing the above stated offence. Inciting is understood as oral or in-writing activity which is performed by means of mass media. The important aspect of this offence is its public form which results in the message reaching broad circles of recipients.</p>   |

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|  |                                  | <p>What should be emphasized, this article prohibits violence and lawless threats directed towards individuals/groups that have been chosen due to the particular criteria. The offence can be committed by a single person or a group. The group is understood as at least three persons, and it does not have to be of formalized character. The crucial aspect of this type of offence is a motive which derives from negation, even disdain for commonly accepted values that are protected by Article 119.</p>   |
|  | Article 190 of the Criminal Code | <p>Whoever makes a threat to another person to commit an offence detrimental to that person or detrimental to his next of kin, and if the threat causes in the threatened person a justified fear that it will be carried out shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.</p> <p>What's important, a punishable threat can be expressed in any form, e.g. verbally, in writing or through a gesture. Thus, in view of this article threats posted on-line are prohibited.</p> |
|  | Article 194 of the Criminal Code | <p>Whoever restricts another person from exercising the rights vested in the latter, for the reason of this person affiliation to a certain faith or their 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.</p>   |
|  | Article 195 of the Criminal Code | <ol style="list-style-type: none"> <li>1. Whoever maliciously interferes with a the 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.</li> <li>2. The same punishment shall be imposed on anyone who maliciously interferes with a funeral, mourning ceremonies or rites.</li> </ol>  |
|  | Article 196 of the Criminal Code | <p>The article makes anyone found guilty of intentionally offending religious feelings through public calumny of an object or place of worship liable to a fine, a restriction of liberty, or to imprisonment for a maximum of two years.</p>   |

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|  |                                  | <p>In the light of this article, the object of protection is freedom of conscience and religion, which is the proof of tolerance of outlook in the state which is supposed to be neutral.</p> <p>Legally accepted criticism is the self-criticism expressed by representatives of the particular denomination, or the criticism which has a form of a pure negative opinion i.e. without degrading, disrespectful and insulting content.</p>  |
|  | Article 256 of the Criminal Code | <p>The article makes anyone found guilty of promoting a fascist or other totalitarian system of state or of inciting hatred based on national, ethnic racial or religious differences, or for reason of the lack of any religious denomination, liable to a fine, a restriction of liberty, or to imprisonment for a maximum of two years.</p> <p>Promoting is not identical with presenting. Promoting means here presenting connected with positive opinionating of the content presented.</p> <p>The article prohibits producing, storing and exposing, however, this prohibition doesn't apply to artistic, educational, collecting, and scientific activity.</p> |
|  | Article 257 of the Criminal Code | <p>The article makes anyone found guilty of publicly insulting a group or a particular person because of national, ethnic, racial, or religious affiliation or because of the lack of any religious denomination liable to a fine, a restriction of liberty, or to imprisonment for a maximum of three years. Crucially, this article describes what types of utterances can be perceived as hate speech. This way it creates the working definition of hate speech that can be applicable for academic usage.</p>  |
|  | Article 148 of the Criminal Code | <ol style="list-style-type: none"> <li>1. Whoever kills a human being shall be subject to the penalty of the deprivation of liberty for a minimum term of 8 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life .</li> <li>2. Whoever kills a human being: 1) with particular cruelty, 2) in connection with hostage taking, rape</li> </ol>  |

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|  |                                  | <p>or robbery, 3) for motives deserving particular reprobation, 4) with the use of firearms or explosives shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.</p> <p>3. Whoever kills more than one person in one act or has earlier been validly and finally convicted for homicide shall be also subject to the penalty specified in § 2.</p> <p>4. Whoever kills a person due to the influence of an intense emotion justified by the circumstances shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.</p>                          |
|  | Article 212 of the Criminal Code | <p>The article concerns the defamation of character. This article has to be applied in the case of insulting a person/group on account of sexual orientation. Articles 256 and 257 (see above) are closed provisions and they can't be used for protection of homosexual or transsexual persons.</p> <p>Defamation can have various forms i.e. it can be realized not only verbally but also in writing, print, and using means of communication (telephone, Internet, etc.). Moreover, defamation is punishable if it was committed towards a person who is able to understand it. The victim of defamation can be a private individual, a group, an institution, a legal person or organization which is not a legal personality.</p> |
|  | Article 216 of the Criminal Code | <p>1. Whoever insults another person in his presence, or though in his absence but in public, or with the intention that the insult shall reach such a person, shall be subject to a fine or the penalty of restriction of liberty .</p> <p>2. Whoever insults another person using the mass media, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year.</p>  |
|  | Article 254 of the Criminal Code | <p>1. Whoever actively takes part in a riot knowing that its participants jointly commit a violent assault on a person or property shall be subject to the penalty of deprivation of liberty for up to 3 years.</p> <p>2. If the result of the violent assault is the death of a person or a serious detriment to their health, the participant in the riot specified in § 1, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.</p>   |

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|  | Article 258 of the Criminal Code | <p>1. Whoever participates in an organised group or association having for its purpose the commission of offences shall be subject to the penalty of deprivation of liberty for up to 3 years.</p> <p>2. If the group or association specified in § 1 has the characteristics of an armed organisation, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.</p> <p>3. Whoever sets up the group or association specified in § 1 or 2 or leads such a group or association shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.</p> |
|  | Article 260 of the Criminal Code | Whoever, by using violence or an unlawful threat prevents the conducting of a lawful meeting, gathering or march, or disperses such a meeting, gathering or march, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.  |
|  | Article 262 of the Criminal Code | <p>1. Whoever profanes a corpse, human ashes or a place of repose of the dead shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.</p> <p>§ 2. Whoever causes a spoliation of a corpse, grave or another place of repose of the dead shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.</p>   |
|  | The Civil Code                   |   |
|  | Article 23 of the Civil Code     | The personal interests of a human being, in particular to health, dignity, freedom, freedom of conscience, surname or pseudonym, image, secrecy of correspondence, inviolability of home, and scientific, artistic, inventor's and rationalizing achievements, shall be protected by civil law independent of protection envisaged in other provisions.   |
|  | Article 24 of the Civil Code     | 1. Any person whose personal interests are threatened by another person's actions may demand that the actions be ceased unless they are not unlawful. In the case of infringement he may also demand that the person committing the infringement perform the actions necessary to remove its effects, in particular that the person make a declaration of the appropriate form and substance. On the terms  |

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|  |                               | <p>provided for in this Code, he may also demand monetary recompense or that an appropriate amount of money be paid to a specific public cause.</p> <p>2. If, as a result of infringement of a personal interest, financial damage is caused, the aggrieved party may demand that the damage be remedied in accordance with general principles.</p> <p>3. The above provisions do not prejudice any rights provided by other regulations, in particular by copyright law and the law on inventions.</p>   |
|  | Article 415 of the Civil Code | Anyone who by a fault on his part causes damage to another person is obliged to remedy it.  |
|  | Article 444 of the Civil Code | <p>1. In the event of bodily injury or health disorder, remedy of damage includes all resulting costs. On the aggrieved party's demand, the person obliged to remedy the damage should pay in advance the sum necessary for medical costs and if the aggrieved party becomes disabled also the sum needed to train him for another occupation.</p> <p>2. If the aggrieved party becomes completely or partially incapable of working or if his needs have increased or his future perspectives have diminished, he may demand an appropriate annuity from the person obliged to remedy the damage.</p> <p>3. If, at the time the judgment is passed, the damage cannot be precisely assessed, a temporary annuity may be awarded to the aggrieved party</p> |
|  | Article 445 of the Civil Code | <p>1. In the instances referred to in the preceding article, the court may award an appropriate sum to the aggrieved party as monetary recompense for the harm suffered.</p> <p>2. The above provision also applies in the case of deprivation of freedom and in the case where a person is induced using deceit, violence or abuse of a dependence relationship to submit to an illicit sexual act.</p> <p>3. A claim for recompense passes to the heirs only if it has been acknowledged in writing or if the court action was brought when the aggrieved party was still alive</p>   |
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|  | The Labour Code  |   |
|  | Division One. General Provisions. Chapter IIa. Equal treatment in employment.  | Articles concerning equal treatment in employment   |
|  | The Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation dated 18 December 1998 |   |
|  | Article 1 of the Act on the INR  | <p>The act regulates:</p> <p>1) the recording, collecting, storing, processing, securing, making available and publishing of the documents of the state security authorities, produced and accumulated from July 22, 1944 until July 31, 1990, as well as the documents of the security authorities of the Third Reich and the Soviet Union relating to:</p> <p>a)</p> <ul style="list-style-type: none"> <li>- the Nazi crimes,</li> <li>- the communist crimes,</li> <li>- other crimes against peace, humanity or war crimes, perpetrated on persons of Polish nationality or Polish citizens of other nationalities between September 1, 1939 until July 31, 1990,</li> </ul> <p>b) other politically motivated reprisals, instigated by the officers of the Polish law enforcement agencies or the judiciary or persons acting on their order which were disclosed in the contents of the rulings made on the strength of the Act, dated February 23, 1991, on considering as invalid the rulings made in the cases of persons oppressed for their activities for the cause of an independent Polish State (Journal of Laws No. 34, section 149, with later amendments),</p> |

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|  |   | <p>c) the actions of the state security authorities described in art. 5;</p> <p>2) the procedure for the prosecution of the crimes specified in point 1, letter a;</p> <p>3) the protection of the personal data of the people referred to in the documents collected in the archive of the Institute of National Remembrance.</p> <p>4) performing activities in the field of public education.</p>   |
|  | Article 55 of the Act on the INR  | Anyone who publicly and contrary to the facts denies crimes referred to in art. 1, point 1 shall be subject to a fine or the penalty of imprisonment of up to 3 years. The sentence shall be made public.  |
|  | The Act of 6 January 2005 on national and ethnic minorities and on the regional languages   |  |
|  | Article 6 of the Act on national and ethnic minorities and on the regional languages  | <p>1. Discrimination on account of one's belonging to a minority shall be prohibited.</p> <p>2. Public authorities shall be obligated to take appropriate measures in order to:</p> <p>1) foster full and real equality in the sphere of economic, social, political and cultural life between persons belonging to a minority and persons belonging to the majority;</p> <p>2) protect persons who are an object of discrimination, hostility or violence because of their belonging to a minority;</p> <p>3) build up inter-cultural dialogue.</p> |
|  | Act of 3rd December, 2010 on the implementation of some regulations of European Union regarding equal treatment (so-called „Equality act”)  |  |
|  | The Act specifies areas and methods of counteracting violations of equal treatment rule due to sex, race, ethnic origin, nationality, religion, denomination, beliefs, disability, age or sexual orientation. The Act applies to natural persons and legal persons, as well as to administrative units other than legal persons, to which legal capacity is assigned under the act. It also |  |

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|  | determines competent authorities appointed to realization of the rule of equal treatment which are the Government Plenipotentiary for Equal Treatment, and Human Rights Defender. |
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To sum up, in Poland, the so-called hate speech laws prohibit public expressions that insult a person/group on the basis of ethnic, national, racial, or religious affiliation, as well as the lack of affiliation. Consequently, the laws punish those who intentionally offend religious feelings by, for example, creating public calumny or disturbing services. The issue of legal protection of LGTB persons still waits for profound analysis in terms of the possible implementation of stricter regulations.

### 3. The most important recommendations from ENAR, ECRI, and CERD concerning hate speech/hate crime in Poland and the Polish state's position in international legislation against racism, hate crime and hate speech

| Country | Institution that gives recommendations                            | Concerns/ Type of recommendation/ Comments   |
|---------|---|--|
| Poland  | ENAR (European Network Against Racism)<br>Shadow Report 2013-2014 | ENAR reveals that:<br>- the most violent physical attacks reported in Poland are perpetrated against Black and Asian ethnic minorities;<br>- in 2013, official figures on reported racist crimes and complaints amounted to 719;<br>- in 2013, official number of crimes and complaints targeting Jewish people amounted to 199;<br>- Poland's official figures reported 95 victims who were Black Europeans / people of African descent;<br>- in 2013, number of crimes and complaints with a racial bias amounted to:<br>176 for physical assault, 651 for incitement to violence and hatred / Verbal assault, and 108 for damage / vandalism;<br>- OSCE/ODIHR data show there has been an increase in the number of hate crimes |

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|  |   | <p>prosecuted in Poland.</p> <p>Selected ENAR’s recommendations for EU Member States including Poland:</p> <ul style="list-style-type: none"> <li>• the EU should launch infringement proceedings against Member States who do not implement EU legislation on combating racist crime;</li> <li>• EU Member States should develop a clear legal framework that recognizes and defines racially motivated crimes, provides for real obligations to investigate the racist motivation, and punishes these crimes more severely.</li> </ul> <p><u>Note:</u><br/>ENAR points to the fact that Poland is one of the few countries that records information on the type of racist crimes and disaggregates the data on the race or ethnicity of the victims.</p>  |
|  | <p>ECRI (European Commission on Racism and Intolerance)</p> | <p>According to ECRI Report on Poland (fifth monitoring cycle) published on 9 June 2015:</p> <ul style="list-style-type: none"> <li>- homophobic statements are a recurrent feature of political discourse;</li> <li>- hate speech on the Internet has found a new target in the Muslim community;</li> <li>- self-regulatory bodies have difficulty in applying appropriate sanctions against persistently offending media outlets whose racist rhetoric has already been stressed;</li> <li>- there are still existing few nationalist groups which are becoming more numerous; (these nationalist groups join forces with football supporters’ associations or other European extremist movements to disrupt various events);</li> <li>- despite the initiatives taken by the Prosecutor General to deal more effectively with racist crime, the results are not satisfactory. The number of complaints, preparatory proceedings and indictments is increasing, but not the number of convictions. Such a situation heightens the impression in Polish civil society that the authorities are not fully committed to combating these scourges. In particular, racism at sports events remains a real problem because few cases of racist crime result in convictions or are the subject of administrative measures;</li> </ul> |

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|  |  | <p>- lastly, the Criminal Code does not explicitly prohibit incitement to violence, hatred and discrimination, or public insults and defamation, or the making of threats, on grounds of sexual orientation or gender identity. Homo/transphobic violence is present in schools, while homosexuality is still seen by a large section of the population as a disease and transgender persons are subject to certain instances of discrimination in access to healthcare.</p> <p>Selected ECRI recommendations for Poland:</p> <ul style="list-style-type: none"> <li>• the authorities should promote the effective implementation of the Prosecutor General’s guidelines on the fight against hate speech and racist violence and rationalise the system for collecting data and producing statistics on such acts;</li> <li>• the authorities should study extremist violence, including in sport, and produce an action plan for preventing and combating it;</li> <li>• to this end, they should extend the terms of reference of the Anti-Cybercrime Division of the Criminal Service in the National Police Headquarters to include monitoring of illegal activities aimed at inciting hatred;</li> <li>• a system for collecting data on equality should be set up and integration programmes should include a programme for raising awareness about, and preventing, racism and racial discrimination. The authorities should speedily adopt the new integration strategy for foreigners and, in particular, alter the arrangements for refugees;</li> <li>• lastly, the Polish authorities should draft and submit to Parliament legislation, or amendments to existing legislation, in order to enshrine in Polish law the equality and dignity of LGBT persons in all areas of life. For this purpose, the authorities should make legislative changes to guarantee comprehensive protection on grounds of sexual orientation and gender</li> </ul> |
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|  |   | <p>identity, ensure that the necessary administrative documents can be issued to persons wishing to enter into a same sex marriage or partnership in another country, and facilitate changes of gender and name. They should also include in the curricula of all branches of education a programme for raising awareness about, and combating, discrimination towards LGBT persons.</p>   |
|  | <p>CERD (Committee on the Elimination of Racial Discrimination)</p> | <p>Concluding observations in terms of hate discourse and hate crime in Poland, published 18 March 2014 (CERD/C/POL/CO/20-21):</p> <ul style="list-style-type: none"> <li>- CERD remains concerned by the persistence of racism and hate speech in sport;</li> <li>- hate speech on the Internet is still widespread and not effectively addressed;</li> <li>- the Committee further expresses its concern about the information that at least four far-right organizations remain active in Poland despite the court decision in 2009 in Brzeg banning an organization which promoted fascism and totalitarian regimes.</li> <li>- the Committee also notes with concern that, although in 2010 three persons were found guilty by the court in Wroclaw of launching a website promoting racial discrimination, that website is still functioning.</li> </ul> <p>CERD recommends that Poland:</p> <ul style="list-style-type: none"> <li>• seek efficient means to combat racism in sport, including imposing fines on clubs for the racist acts of their supporters, and continue working with sporting associations to promote tolerance and diversity;</li> <li>• undertake further measures in conformity with its legislation and with article 4 of the Convention, in addition to the initiatives of the General Prosecutor, to tackle hate speech better on the Internet;</li> <li>• take action against websites promoting racial hatred;</li> <li>• ensure effective enforcement of the state's laws declaring illegal parties or</li> </ul> |

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|  |  | organizations which promote or incite racial discrimination, in conformity with article 4 (b) of the Convention. |
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#### 4. Definitions and interpretations of hate crime (including hate speech)

##### a) in law

There is no definition as such, however, certain articles describe the concept of hate speech. The most important articles describing the hate speech offence are presented in the table below. As for hate crime, these are offences whose decisive motive is prejudice, and they are determined in the articles described in section 2 (see above).

| Country | Definitions   | Provided by whom                 | What do they say  |
|---------|---------------|----------------------------------|---|
| Poland  | No definition | Article 257 of the Criminal Code | 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. |
|         |               | Article 196 of the Criminal Code | 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.  |
|         |               | Article 216 of the               | 1. Whoever insults another person in his presence, or though in his   |

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|  |  | Criminal Code | absence but in public, or with the intention that the insult shall reach such a person, shall be subject to a fine or the penalty of restriction of liberty .<br>2. Whoever insults another person using the mass media, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to one year. |
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**b) in police procedures**

| Country | Definitions                          | Provided by whom  | What do they say   |
|---------|--------------------------------------|---|--|
| Poland  | Definition of the term „hate speech” | Council of Europe’s Committee of Ministers’ Recommendation No. 97 (20) on „hate speech” dated 20 October 2007 | “Hate speech” shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. |
|         | Definition of the term „hate crime”  | ODIHR – Office for Democratic Institutions and Human Rights (within OSCE <sup>5</sup> )                       | Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people.<br>A hate crime therefore comprises two distinct elements: <ul style="list-style-type: none"> <li>• It is an act that constitutes an offence under criminal law;</li> <li>• In committing the crime, the perpetrator acts on the basis of prejudice or bias.</li> </ul>      |

<sup>5</sup> OSCE – Organisation of Security and Cooperation in Europe

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|  |  |  | <p>Thus, the perpetrator of a hate crime selects the victim based on the victim's membership or perceived membership of a particular group. Where the crime involves damage to property, the property is chosen because of its association with a victim group and can include such targets as places of worship, community centres, vehicles or family homes. Prejudice or bias can be broadly defined as preconceived negative opinions, intolerance or hatred directed at a particular group. The group must share a common characteristic that is immutable or fundamental, such as "race", ethnicity, language, religion, nationality, sexual orientation, or other characteristic.</p> |
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**c) examples of interpretations of law used in judgement of guilt / acquittal of hate crime (including hate speech) and in giving aggravated sentences**

| Country | Source of information  | Provided by whom   | What do they say  |
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| Poland  | <a href="http://www.saos.org.pl/judgments/5074">www.saos.org.pl/judgments/5074</a><br>[Accessed: 20.12.2015] | Wrocław District Court, 29.01.2013<br><br>Sygn. akt III K 12/13<br><br>Hate motive found | A suspect was found guilty of publicly insulting a victim due to his/her membership of a racial minority using words universally recognized as offensive. He also committed an offence of infringement of corporeal immunity as he kicked the victim in the left leg. |
|         | <a href="http://www.bialystok.sr.gov.pl/pliki/orzecznictwo/">www.bialystok.sr.gov.pl/pliki/orzecznictwo/</a> | Białystok District   | A suspect was not found guilty of exhorting others to   |

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|  | <p><a href="#">VIIK 962 12 wyrok uzasadnienie.pdf</a><br/>[Accessed: 20.12.2015]</p>                                     | <p>Court, 22.07.2013<br/><br/>Sygn. akt VII K 962/12<br/><br/>Not guilty</p>                                    | <p>hatery towards persons of Chechen origin through offensive comments posted on the web portal (the suspect described them as aggressive towards representatives of other nationalities, and named as „parasites”, among others). According to an expert witness, the suspect only shared his observations and opinions, and he referred to common knowledge. As he/she stated, a word „parasite” is evaluative and pejorative in character but it is not connected with exhorting to hatery due to religion or ethnicity, and it is not abusive.</p> |
|  | <p><a href="http://www.saos.org.pl/judgments/126898">www.saos.org.pl/judgments/126898</a><br/>[Accessed: 20.12.2015]</p> | <p>Kraków Court of<br/>Appeal, 07.11.2014<br/><br/>Sygn. akt II AKa<br/>189/14<br/><br/>Hate motive found</p>   | <p>Suspects were found guilty of using violence towards a black citizen of Ghana in the form of beating him. They also publicly articulated lawless threats towards him using vulgar words with the racist content due to his ethnic identity.</p>   |
|  | <p><a href="http://www.saos.org.pl/judgments/147479">www.saos.org.pl/judgments/147479</a><br/>[Accessed: 20.12.2015]</p> | <p>Wrocław Court of<br/>Appeal, 12.06.2014<br/><br/>Sygn. akt: II AKa<br/>149/14<br/><br/>Hate motive found</p> | <p>The suspect was found guilty of public exhorting others to use violence towards a group of person of Roma minority due to their ethnic origin (e.g. to destroy their houses). The content was posted on the website of one of Polish on-line newspapers.</p>  |

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|                        | <a href="http://www.saos.org.pl/judgments/182929">www.saos.org.pl/judgments/182929</a><br>[Accessed: 20.12.2015]   | Łódź Court of Appeal,<br>17.09.2015<br><br>Sygn. akt II AKa<br>167/15<br><br>Hate motive found | A suspect was found guilty of using violence towards a citizen of Vietnam due to the victim's racial identity. The suspect threw a bottle towards the victim, and then he destroyed five chairs, a table, glass utensils and he damaged the buffet.   |
|                        | <a href="http://wyborcza.pl/1,76842,16269316,Sad_rejonowy_Wojewodzki_i_Figurski_nie_zniewazyli.html#ixzz42MN5E3e7">http://wyborcza.pl/1,76842,16269316,Sad_rejonowy_Wojewodzki_i_Figurski_nie_zniewazyli.html#ixzz42MN5E3e7</a><br>[Accessed: 20.12.2015]    | Warszawa Praga-Północ District Court,<br>04.07.2014<br><br>Not guilty                          | Two radio journalists were not found guilty of insulting the spokesman of Public Transport Main Executive due to his Polish-Hindi origin. During the satirical radio programme they named him „Negro” and stated that the current episode was sponsored by „Warsaw branch of Klu-Klux-Klan”. The radiostation was punished by financial penalty but the journalist themselves weren't charged with affronting because – as they explained to the judge – they intentionally made excessive comments and used bizarre hyperbole to create the artistic atmosphere of „pure nonsens” and this way deride racist opinions of many Poles. |
| Out of analysed period | <a href="http://www.tvp.info/24078324/kobieta-skazana-na-obrazanie-uchodzcow-brudasy-pierjeszcze-pomoca-gardza-do-gazu">www.tvp.info/24078324/kobieta-skazana-na-obrazanie-uchodzcow-brudasy-pierjeszcze-pomoca-gardza-do-gazu</a><br>[Accessed: 18.02.2016] | Lublin-West District Court, 18.02.2016<br><br>Hate motive found                                | The court found a suspect guilty of posting offensive comments on a social networking site (Facebook) under the film about refugees from Syria in Hungary. A suspect offended refugees using vulgar statements. The prosecutor office was informed about the offence by members of the Open Republic Association.   |



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