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**WRITTEN COMMENTS OF THE EUROPEAN ROMA RIGHTS CENTER
CONCERNING THE REPUBLIC OF POLAND
FOR CONSIDERATION BY THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD
AT ITS 31ST SESSION, SEPTEMBER 16-OCTOBER 4, 2002**

I. EXECUTIVE SUMMARY

The *European Roma Rights Center* (“the *ERRC*”), an international public interest law organisation, respectfully submits written comments concerning Poland for consideration by the Committee on the Rights of the Child (“the Committee”) at its 31st session, September 16-October 4, 2002.

The *ERRC* is aware of measures taken by the Government of Poland (“the Government”) as they are described in the Report submitted by the Government under Article 44 of the Convention.¹ To date, however, these measures have been insufficient to ensure the effective implementation of the Convention, particularly with regard to Articles 2, 3, 6, 9, 12, 24, 27, 28, 29, 37, 40.

As to Article 2, the Government has not taken appropriate measures to ensure that all children are protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child’s parents, legal guardians, or family members. According to documentation by the *ERRC* and that of other non-governmental organisations, Romani children in Poland, similar to Romani adults, suffer widespread discrimination in virtually all spheres of public life—from the administration of justice and the protection of the family to education and housing.

As regards Article 3 of the Convention, the *ERRC* has documented a number of cases in which Polish authorities have taken action against Romani children and families in flagrant violation of the principle of the best interests of the child. Areas of particular concern in this respect include the treatment of alien Romani children on Polish territory and the administration of juvenile justice.

As to Article 6 of the Convention, the Government has failed to ensure to the maximum extent possible the survival and development of Romani children. In particular, Polish authorities have engaged in discriminatory practices in granting municipal housing to Romani families, in developing the necessary infrastructure for a minimum standard of living, and in facilitating the access of Romani children to health care. Moreover, the development of entire generations of Romani children to their full potential has been hindered by segregationist practices in the field of education, providing Romani children sub-standard education in often inadequate material conditions.

¹ *Periodic Reports of States Parties Due in 1998: Poland*. 6 February 2002 CRC/C/70/Add.12 (Hereinafter “Government Report”).

As to Article 9, the *ERRC* is concerned about a recurring pattern of forced separation of alien Romani children from parents during expulsion procedures from Poland. The *ERRC* has documented cases in which police have placed Romanian Romani children in children's homes, without proper and full judicial review and without taking into consideration the best interests of the child. Parents of children remanded into state care are frequently not provided with information concerning the whereabouts of their children, much less with the opportunity to maintain personal relations and direct contact or to reunite with them.

As regards Article 12, the *ERRC* is concerned about the fact that the views of Romani children and their families are often not taken into consideration by Polish authorities in deciding upon the placement of children in state care or in segregated school facilities. The *ERRC* has also received reports of Romani children and their families whose views have not been heard during the administration of juvenile justice.

As to Article 24, despite explicit constitutional provisions protecting the right of access to health care for all Polish citizens, Romani children in Poland are in practice often blocked from exercising this right. The access of Romani persons to health services is often severely impeded because many Romani communities live in segregated settlements, in isolated villages or on the outskirts of the cities, in areas with neither public transportation nor readily available telephone service. Moreover, the extremely poor living conditions of Romani families exacerbate their poor health.

As to Article 27, the *ERRC* is concerned about the standard of living of Romani children, in particular in the area of housing. The majority of Romani families in Poland live segregated from the rest of the population, inhabiting sub-standard housing, barracks or shanties, with insufficient sanitation, and without potable drinking water, electricity or gas. Romani families are often denied requests for municipal housing.

As to Articles 28 and 29, the *ERRC* has documented systemic violations of the right to education with respect to Romani children. These violations take the form of widespread discriminatory and segregationist practices, such as the segregation of Romani children into so-called "Gypsy classes" or classes for the mentally disabled, racially-motivated abuse in school, and the apathy of Polish school authorities in combating low attendance and high drop-out rates among Romani school-age children.

As to Article 37, the *ERRC* is concerned about the recurrent subjection of Romani children to torture or other cruel, inhuman or degrading treatment or punishment by both state and non-state actors, as well as about the unlawful or arbitrary deprivation of liberty of Romani children. The *ERRC* has documented a number of cases in which children have been subjected to such treatment by law-enforcement officials, as well as by sympathisers of nationalist extremist and/or racist movements. When such cases occur, they are rarely investigated adequately, and even more rarely prosecuted by the authorities.

As to Article 40, police officials sometimes arbitrarily bring charges against Romani youths and children who, under duress and without a full understanding of the proceedings to which they are subject, confess to crimes they may not have committed or to crimes with which they should not have been criminally charged. Moreover, children alleged or accused of having infringed the penal law are often subjected to torture and/or physical abuse, and/or are not granted appropriate procedural guarantees such as the right to legal assistance or to contact their families.

II. BACKGROUND

In recent years, violence and discrimination against Roma in Poland has increased significantly, as has the number of exclusionary or inciteful pronouncements by leaders and activists of racist groups. Throughout the 1990s, Polish authorities have systematically failed to respond to a wave of anti-Romani crime, as well as to ingrained patterns of racial discrimination. International bodies

monitoring Poland's human rights record have shown increasing concern about the rise in anti-Romani actions and sentiments among the Polish public.² Still, as recently as May 2002, the Ministry of Interior and Administration contended that Roma were not targeted for violence more often than other groups living on the territory of the Polish Republic.³

The proportionally small number of Roma in Poland⁴ – at least in comparison with other Central and Eastern European countries – has been used by Polish authorities to downplay the problems that Romani communities face and to deny the persistent and pervasive nature of anti-Romani sentiment among the majority population.⁵ Romani children have been particularly affected by the increase in

² In the concluding observations of its review of Poland in October 1997, the United Nations Committee on the Elimination of Racial Discrimination (CERD) pointed out that violence related to racism – and explicitly anti-Romani sentiment – is a threat in Polish society (See “Concluding observations of the Committee on the Elimination of Racial Discrimination: Poland. 18/08/97. CERD/C/304/Add.36.” CERD, 15 October 1997, p.4). Similarly, in its Second Report on Poland, the European Commission Against Racism and Intolerance (ECRI) expressed concerns regarding police violence against Roma (See ECRI, Second Report on Poland, adopted on December 10, 1999).

³ Letter to *ERRC* from the Ministry of Interior and Administration, May 9, 2002.

⁴ Official figures on the size of the minority population in Poland vary. In 1999, national minorities in Poland did not exceed five percent of the total population of 38,667,000 inhabitants, according to the Main Statistical Office (see Główny Urząd Statystyczny, “Statistical Yearbook of the Republic of Poland 1999”, Warsaw, 2000; Klimkiewicz, Beata, “Minority Protection in Poland”, *Monitoring the EU Accession Process*, Budapest: Open Society Institute, 2001, p.382). Estimates by the Ministry of Internal Affairs and Administration in 2001 indicated that national minorities in Poland constituted approximately 2.2 percent to 2.5 percent of the whole population in that year (see “Reports submitted by States Parties under Article 9 of the Convention, Sixteenth periodic reports of States parties due in 2000, Addendum, Poland,” CERD/C/384/Add. 6, 27 September 2001, para. 30). Post-World War II censuses have not included questions pertaining to ethnicity. Exact figures on the number of Roma in Poland are unavailable, but the Ministry of Internal Affairs and Administration has published estimates. In 2001, the Ministry reported that roughly 30,000-35,000 Roma lived in Poland (see Ministry of Internal Affairs and Administration, “Pilot Government Programme for the Roma Community in the Malopolska Province for the Years 2001-2003”, Warsaw, February 2001, p.3, available at: http://www.mswia.gov.pl/pdf/program_eng.pdf). The figures given by various sources during the 1990s range between 15,000 and 50,000. Romani leaders indicate a number up to 50,000 Roma (For more see A. Rochowicz, “National Minorities in Poland”, *The Protection of Ethnic and Linguistic Minorities in Europe*, Packer, J. and K. Myntti, eds., Institute for Human Rights, Abo Akademi University, Turku/Abo, 1993, p.111; Bugajski, Janusz, *Ethnic Politics in Eastern Europe: A Guide to National Policies, Organisations and Parties*, Centre for Strategies and International Studies, 1994, p.360; Paleczny, Tadeusz, “Zródła potocznej wiedzy o Cyganach: Romowie w prasie polskiej – rok 2000”, in *Dialog – Pheniben: Pismo Stowarzyszenia Romów w Polsce*, No. 4, Year 2000, pp.29-30; Helsinki Foundation for Human Rights, *The Protection of National Minorities in Poland*, September 1999. Other estimates on the size of the Romani population provided in European Roma Rights Center interview with Mr Tadeusz Gabor, June 21, 2001, Laskowa Górna; European Roma Rights Center interview with Mr Andrzej Mirga, June 24, 2001, Kraków; European Roma Rights Center interview with Mr Stanislaw Stankiewicz, June 27, 2001, Bialystok.) It is hoped that a more accurate count of minorities in Poland will be provided by a census scheduled to take place in 2002.

⁵ Surveys indicate that, throughout the 1990s, Roma were the least liked ethnic group in Poland. Of the respondents in a 1996 poll, 71 percent stated that they disliked Roma, 16 percent were indifferent towards them, and only 10 percent expressed sympathy with Roma (see Centrum Badania Opinii Społecznej, *Stosunek Polaków do innych narodowości*, Warszawa:1996, p.3). A November 2000 survey conducted by the *Centre for the Study of Public Opinion* indicated that alarmingly high levels of negative attitudes persisted toward Roma: 55 percent of respondents expressed negative sentiments, 24 percent positive, and 18 percent of the respondents remained ambivalent (see Centrum Badania Opinii Społecznej, “Stosunek Polaków, Czechów, Węgrów i Litwinów do innych Narodów”, November 2000, available on the Internet at: <http://www.cbos.org.pl/spiskom.pol/2000/kom165/kom165.htm>). The study indicated that Roma remained the

racist attitudes and racially motivated crime. Romani children and their parents have fallen victim to abuse from public officials as well as extremists, and many Roma live under the permanent threat of violence, in a climate of fear and insecurity pervading all aspects of their lives. In recent years, Romani children have been subject to discriminatory practices and segregationist policies. They face exclusion on a day-to-day basis: they are frequently separated from their non-Romani peers in school; the homes they live in are often in ghettos or illegal settlements on the outskirts of Polish towns; basic social services widely available to the majority population, such as health care, are in many cases denied to them and their families.

In its 1995 Concluding Observations on Poland (CRC/C/15/Add.31/15 January 1995), the Committee on the Rights of the Child expressed concern that “traditional attitudes still prevailing in the country may not be conducive to the realisation of the general principles of the Convention [on the Rights of the Child], including, in particular, Article 2 (principle of non-discrimination), Article 3 (principle of the best interests of the child) and 12 (respect for the views of the child).” The Committee identified Romani children as a particularly vulnerable group and recommended that “further measures be taken to prevent a rise in discriminatory attitudes” towards them. The documentation submitted by the *ERRC* to the Committee amply demonstrates that no adequate measures have been taken in this area since the Committee issued its 1995 findings. Rather, since violence against Roma and segregationist practices in education and elsewhere have been on the rise during the second half of the last decade, the situation of Romani children, and of Romani persons in Poland in general, has worsened.

III. GENERAL DISCUSSION

The *ERRC* is concerned that the Government Report to the Committee presents an extremely fragmentary picture of issues arising under the Convention. Under its discussion of a number of articles, the Government appears content to present the relevant domestic legislative framework, without providing information on the implementation of the legal provisions it cites.

The Government has provided the Committee with no information concerning the particular situation of Romani children in Poland. On the basis of the Government Report, it seems that officials may be unaware of—or may be seeking to downplay—the extent to which Romani children are subjected to violence, abuse, segregation, and discrimination by both state and non-state actors in Poland.

In its Report, the Government has failed to provide the Committee with data disaggregated by ethnicity or even family income. Thus, the little statistical data included in the report in fact occludes the massive disparities between the situation of Romani children and children belonging to the majority population in Poland, particularly in the fields of education, housing, and health care.

IV. IMPLEMENTATION OF GENERAL PRINCIPLES

Discrimination against Romani Children

As to Article 2, according to documentation by the *ERRC* and that of other non-governmental organisations, the Government has not taken appropriate measures to ensure that all children are protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child’s parents, legal guardians, or family members. In Poland, Romani children, like Romani adults, suffer widespread discrimination in virtually all spheres of public life—from the administration of justice and the protection of the family unit to education and housing.

least-liked ethnic group in Poland, receiving only 2.47 points on a favourability scale 1-7, where “1” was least sympathetic and “7” was most sympathetic.

Despite a general constitutional ban on discrimination, and despite the fact that Poland is party to a number of international treaties banning discrimination,⁶ Polish law includes only fragmentary and anaemic domestic legal measures under these commitments. The existing legal prohibitions and other legal and administrative measures against racial discrimination are few, and have to date have been ineffective in prohibiting and bringing to an end racial discrimination.

Polish penal law provisions ban racially motivated violent acts (Article 119(1) of the Polish Penal Code), propagation of racial hatred (Article 256 of the Polish Penal Code), as well as several types of defamation and insult (Article 257 of the Polish Penal Code). These are rarely enforced. In addition, anyone seeking redress for differential treatment based on race or ethnicity in Poland would be forced to make use primarily of civil and administrative provisions only tangentially related to discrimination, such as civil law provisions related to personal honour. *ERRC* knows of no instances in which Romani victims of discrimination have received due remedy.

Despite the pervasive nature of anti-Romani sentiment in Poland, the Government report has provided the Committee with no factual information concerning the extent of racial discrimination against Romani children. The Government Report makes no reference to concrete measures authorities have taken to combat racial discrimination against Romani children and children belonging to other minorities. The cursory look at Poland's meagre anti-discrimination provision only provokes the suspicion that the Government does not fully understand—much less act adequately to implement—its commitments under the Convention.

Violations of the Principle of the Best Interests of the Child

As regards Article 3 of the Convention, the *ERRC* has documented a number of cases in which Polish authorities have taken action against Romani children and families in flagrant violation of the principle of the best interests of the child. Areas of particular concern in this respect include the treatment of alien Roma on Polish territory and the administration of juvenile justice. Polish authorities have repeatedly failed to take into consideration the best interests of the child in the course of deportation procedures, the remand of Romani children into alternative care and judicial proceedings. Additionally, the authorities' failure to secure adequate housing conditions, including basic infrastructure such as sanitation and sewage, and to ensure equal access to health care for Roma in

⁶ In addition to the Convention on the Rights of the Child, Poland is party to the International Convention for the Elimination of Racial Discrimination (ratified December 5, 1968), the International Covenant on Civil and Political Rights (ratified March 18, 1977), the International Convention on Economic, Social, and Cultural Rights (ratified March 18, 1977), and the European Convention on Human Rights (ratified January 19, 1993).

Many of the provisions Standards on anti-discrimination law in Europe are currently set primarily by the European Council of the European Union Directive 2000/43/EC “implementing the principle of equal treatment between persons irrespective of racial or ethnic origin” (hereinafter “the Directive”). The Council has set a deadline of July 19, 2003 for European Union member states to amend domestic laws to bring them into conformity with the Directive. The Directive is a component of the *acquis communautaire* – the body of law governing the European Union – and the incorporation of the provisions of the Directive is therefore binding on Poland as part of the process of European Union enlargement. Poland must bring the substance of the Directive into its domestic law by the date of its accession to the Union. Many provisions of the European Union Directive have not been incorporated into Polish domestic law. There were also no executive or administrative bodies specifically charged with addressing issues related to discrimination. Indeed, the Directive itself was almost entirely unknown, even among legal experts working in the human rights field, and discrimination issues were frequently confused – even by experts – with minority rights issues, to the detriment of the former. Additionally, there were no public indications that Polish officials intended to remedy the massive gap in anti-discrimination law provisions any time in the near future. There was near full ignorance in Poland on even the issue of what might justify the need for such laws.

As of July 12, 2002, Poland had similarly failed to sign or ratify Protocol 12 to the European Convention on Human Rights. Additionally, as of June 21, 2002, Poland had neither signed nor ratified the Revised European Social Charter.

Poland, reflects a fundamental disregard for the best interests of the child where Romani families and children are concerned. Specific cases illustrating the violation of the principle of the best interests of the child are discussed under Sections V (Civil Rights and Freedoms), VI (Family Environment and Alternative Care), VII (Basic Health and Welfare), VIII (Education), and IX (Special Protection Measures) of this submission.

Obstacles to the Development of Romani Children

As to Article 6 of the Convention, the Government has failed to ensure to the maximum extent possible the survival and development of Romani children. In particular, Polish authorities have engaged in discriminatory practices in granting municipal housing to Romani families, in developing the necessary infrastructure for minimum standard of living, and in facilitating the access of Romani children to health care. Moreover, the learning development of entire generations of Romani children has been hindered by segregationist practices in the field of education providing Romani children sub-standard education in often inadequate material conditions. Specific cases illustrating violations of Article 6 are discussed under Sections VII and VIII of this submission.

Disregard for the Views of the Child

As regards to Article 12, the *ERRC* is concerned about the fact that the views of Romani children and their families are often not taken into consideration by Polish authorities deciding upon the placement of children in state care or in segregated school facilities. The *ERRC* has also received reports of Romani children and their families whose views were not heard during the administration of juvenile justice. Specific cases illustrating violations of this principle of the Conventions are discussed under Sections VI, VIII, and IX of this submission.

V. CIVIL RIGHTS AND FREEDOMS

Racially Motivated Violence and Police Abuse

As to Article 37 (a), the Government Report limits itself to presenting legal prohibitions against subjecting minors to violence and abuse:

129. The Convention on the Rights of the Child (article 37) forbids the inhuman treatment, debasement and punishment of children. In this area, reference should be made primarily to article 72, paragraph 2, of the Constitution which grants everyone the right to demand “of the organs of public authority that they defend children against violence, cruelty, exploitation and depravity”. Polish criminal law considers abusive conduct towards a minor to be a crime. Article 207, which defines that basic category of crime, states that “The physical or mental abuse of a family member, another individual who is in a state of permanent or temporary dependence on the offender, a minor or an individual with a mental or physical disability is punishable by from three months’ to five years’ imprisonment.”

This overview of the relevant legal provisions is not sufficient to present the real dimensions of the issues related to Article 37(a) of the Convention as they presently exist in Poland.

In particular, the *ERRC* is concerned that the Government’s cursory treatment of these fails to impart the existence of practices whereby Romani children are subjected to torture or other cruel, inhuman or degrading treatment or punishment by both state and non-state actors. The *ERRC* has documented a number of cases in which Romani children have been subjected to ill-treatment by law-enforcement officials and/or by sympathisers of nationalist extremist and/or racist movements. When such cases occur, they are rarely investigated adequately, and even more rarely prosecuted by the authorities.

The following cases are illustrative and do not purport to constitute a comprehensive survey:

In one serious case of alleged police brutality never brought to justice, 15-year-old Robert Pawlowski was allegedly severely ill-treated by a police officer on November 26, 1996, in Wodzislaw Slaski, in

the Silesia province. While staying with his aunt in Wodzislaw Slaski, Robert Pawlowski, a Romani youth from Zywiec, also in the Silesia province, returned late in the evening from a visit with friends, in the company of Ms B.B., a 26-year-old non-Romani woman. Robert Pawlowski was allegedly kicking a rubbish bin in the street when he was approached by a police car with three policemen inside. Frightened by the sight of the police, Robert Pawlowski fled. One of the policemen, Officer B.S., pursued him on foot while the other two police officers followed in the car. The police officers allegedly pulled Robert Pawlowski's female acquaintance, Ms B.B., into the car, where she remained for the duration of the incident.

Robert Pawlowski headed to his aunt's house, where Officer B.S. caught up with him and prevented him from getting inside the apartment. Robert Pawlowski's aunt, Ms Danuta Balasz, described what followed:

I was in bed when I heard something outside that sounded like a shot. Then, someone started banging on the door. I hurried to open it. Robert was in the stairwell, trying to get in, and a man in black wasn't letting him. I tried to help Robert inside – we were both pulling him. The man was stronger than me. I had to let Robert go. I didn't realise that the man was a police officer until he turned around and I saw the big white letters on his back. I asked him what he wanted from Robert. I told him that I was his aunt and that I wanted to know what he had done, but he wouldn't pay any attention to me.⁷

Ms Balasz told the *ERRC* that Officer B.S. pushed Robert Pawlowski down the stairs and started beating him. She reported that she had heard two shots during the incident, one outside the house before Robert Pawlowski arrived at her door, and a second during the beating on the staircase. Ms Balasz told the *ERRC* that, when she ran downstairs, she found Robert Pawlowski lying on the ground by the building's entrance, bleeding heavily from a head wound. She stated:

When I saw my Robert lying on the ground with all that blood around him, I started screaming at the policeman, 'What have you done to him? You killed the boy!' The policeman looked at me and said, 'You Gypsies should all be taken to the forest and shot.'⁸

According to Ms Balasz, Robert Pawlowski lay on the ground for half an hour before an ambulance came. Robert Pawlowski was first taken to the hospital in Wodzislaw Slaski but was immediately transferred to a better-equipped facility in neighbouring Jastrzebie Zdroj, where he underwent surgery. He remained in hospital for a month. According to the physicians who treated him, he will never fully recover from the head injuries he sustained, which include a broken skull and brain damage.⁹

Following an official complaint filed against the police by Ms Balasz, an investigation into the incident was launched by the Jastrzebie Zdrój Prosecutor's Office in December 1996. According to information made available to the *ERRC*, the case file, No. 2Ds 1602/96, states that the police deny having used any violence against Robert Pawlowski. According to *ERRC* information, as of November 2001, the police had issued no written statement regarding the incident. The only medical protocols prepared to date have proven inconclusive as to the cause of Robert Pawlowski's injuries.

Another case of police violence against young Romani men reportedly took place in Ciechocinek, approximately 100 kilometers from Łódź, on July 26, 1998. The incident involved four young Roma – 15-year-old A.B., 19-year-old C.D., 27-year-old E.F., 35-year-old and G.H. – who were reportedly beaten by local policemen. As documented by the Łódź-based non-governmental organization *Romani Information and Counselling Centre*, the incident took place the night after a Romani music festival.

⁷ *European Roma Rights Center* interview with Ms Danuta Balasz, June 14, 1997, Wodzislaw Slaski.

⁸ *European Roma Rights Center* interview with Ms Danuta Balasz, June 14, 1997, Wodzislaw Slaski.

⁹ Medical certificate No. 15759/96.

After midnight, a police car approached the group, who were on their way home to the village of Konstantynów Łódzki after the festival. Policemen wearing black commando suits with masks forced the Roma to get into the police car, in front of at least 30 Romani witnesses, and took them to a forest out of town. There they reportedly beat the Roma severely. The police also allegedly confiscated the documents and jewellery of one of the Roma. After they had been released at around five the next morning, one of the Roma managed to contact his relatives. All members of the group were subsequently taken to a nearby town of Wloclawek. As a consequence of the police assaults, the oldest of the Roma was diagnosed with a broken leg and sent to the Łódz hospital for treatment. Another Romani man from the group was diagnosed with a concussion. The Roma who were assaulted believe that they were mistaken by the police for another group of Roma who had apparently initiated a fight in a Ciechocinek restaurant on the same evening.

In another incident of police brutality, in April 2001, two brothers, 11-year-old Pawel Ciureja and 13-year-old Michal Ciureja, were picked up on a street by two policemen in Nowy Sacz, in the Malopolska province. The policemen allegedly led the two children under a bridge in Nowy Sacz and brutally beat them. Michal Ciureja told the *ERRC*: “They beat us in the ribs and on the arms for about 20 minutes and then they let us go.”¹⁰ After the boys went home, their mother took her younger son to the hospital, where he was diagnosed with a light concussion. The parents contacted Mr Mieczyslaw Szczerba, a local Romani leader, who filed a complaint with the police. According to Mr Szczerba, the boys identified the two policemen. Mr Szczerba confronted one of them, asking him why he beat the boys. According to Mr Szczerba, the officer allegedly replied: “I just felt like it”.¹¹ After Mr Szczerba informed the policeman that he would take the case to court, the police officer requested that he not, promising not to beat the boys again. Because the boys’ parents feared potential revenge from the police, they requested that the charges be dropped.¹²

Romani children are also frequently the target of racially motivated violence from non-state actors such as sympathisers of nationalist extremist groups. For instance, in April 1999, a two-year-old child was reportedly the victim of a violent attack in his family’s front yard in Zabrze. Ms Anna Ondycz, a 36-year-old Romani woman from Zabrze, told the *ERRC* that in April 1999, a skinhead walking past her house brutally hit her two-year-old son, who fell unconscious to the ground: “I let my children to go to the yard and play there. I was in the kitchen. Then I heard my 10-year-old son, P.O., shouting: ‘Mum, mum, quickly, come here.’”¹³ Her son P.O.¹⁴ told the *ERRC*: “I was playing in the street and when I looked up, I saw two skinheads coming up the street. I shouted at my mother to come, and ran to the woodshed and hid there because I was afraid. From where I was hiding, I saw one of the skinheads hit my brother’s face and he fell on the ground.”¹⁵ Ms Ondycz did not report the incident to the police.

In a similar incident, on May 3, 2000, Rodica Caldarar, a 5-year-old Romani girl from Romania, was standing with her grandfather near a kiosk in Bialystok, Podlasie province, because they wanted to buy a hot dog. The local daily newspaper *Kurier Poranny* reported that a group of skinheads who were standing around and drinking beer began shouting “Poland for Poles” and “Romanian swine go

¹⁰ *European Roma Rights Center* interview with Michal Ciureja, June 21, 2001, Nowy Sacz.

¹¹ *European Roma Rights Center* interview with Mr Mieczyslaw Szczerba, June 22, 2001, Nowy Sacz.

¹² *European Roma Rights Center* interview with Mr Mieczyslaw Szczerba, June 22, 2001, Nowy Sacz.

¹³ *European Roma Rights Center* interview with Ms Anna Ondycz, June 24, 2001, Zabrze.

¹⁴ In a number of instances, the *ERRC* has chosen to withhold the names of victims, witnesses and/or alleged perpetrators. The *ERRC* is prepared to release names if the interests of justice so require.

¹⁵ *European Roma Rights Center* interview with P.O., June 24, 2001, Zabrze.

home”¹⁶ and provoking her grandfather. They reportedly pushed him around and called the 5-year-old girl “you little Gypsy whore”. The newspaper *Rrom-po Drom* reported that one of the skinheads hit her in the eye, badly damaging her cornea, before fleeing. The police arrested four suspects between the ages of 17 and 20. The grandfather said that he recognised one of them, but, he told *Rrom-po Drom*, the police chose to release both perpetrators due to insufficient evidence.¹⁷ Mr Stanislaw Stankiewicz, editor-in-chief of *Rrom-po Drom* and a Romani community leader, took Rodica to the hospital and alerted other media of the incident.¹⁸ In a letter to the *ERRC*, the Ministry of Justice states that the investigation in the case was dismissed on June 30, 2000, because the perpetrators could not be found.¹⁹

In one case documented by the *ERRC*, the police not only failed to protect a Romani family under attack from sympathisers of nationalist extremists, but, even more egregiously, joined the assailants in beating members of the family, including the children. Thus, on May 3, 1999, at around 8 PM, a gang of skinheads reportedly attacked the Siwak family near their home in the town of Nowy Sacz. Thirty-seven-year-old Mr Grzegorz Siwak, along with his two brothers, his wife, Ms Sabina Siwak, and their four children, ages 14, 12, 5, and 2, were on their way home from visiting relatives on Kraszewskiego Street in Nowy Sacz. As they were walking, they noticed a group of approximately 40 skinheads. Mr Siwak told the *ERRC*: “Some of them were under a bridge near our house and some of them were walking around. They spotted us and exclaimed: ‘Let’s attack the Gypsies! Gypsies out of Poland, so Poland will be Polish.’ We started to run in various directions.”²⁰ According to Mr Siwak, the attackers, armed with wooden and metal baseball bats, steel chains, and tear gas, caught them and beat them.

Employees of a neighbouring business reportedly called the local police, who then arrived wearing black masks (*balaclavas*). According to Mr Siwak, the police did not assist them and left the scene of the crime. After the police had left, the attack reportedly continued and a second call was made by employees of a neighbouring business. Three police cars arrived at the scene. According to Mr Siwak, this time the police, wearing masks, started to beat his entire family: “Another three police cars arrived by 10 PM, and the policemen started to beat us and Roma who had heard about the attack and come to help us. They even beat my children.”²¹ As a result of the beating by police, according to Mr Siwak, his family members sustained shock, especially the children, as well as bruises from the truncheons.²² Additionally, police accused Mr Grzegorz Siwak and his brother Mr Marcin Szczerba of public drunkenness and of starting the fight and detained them in a police detention cell for drunken people at the police station until the next day.

Ms Sabina Siwak, 33-years-old at the time of the attack, took her children home after her husband was taken to the police station. At around 11 PM, according to Ms Siwak, a group of approximately 30 skinheads came to the house, smashing all of its windows with rocks. Molotov cocktails were thrown

¹⁶ “Pobili ja, bo jest Rumunka”, *Kurier Poranny*, May 6, 2000, p.3. The Polish media, as well as the general public, often use “Romanian” and “Gypsy” interchangeably to refer to Romani individuals.

¹⁷ *European Roma Rights Center* interview with Mr Stanislaw Stankiewicz, June 27, 2001, Bialystok.

¹⁸ *European Roma Rights Center* interview with Mr Stanislaw Stankiewicz, June 27, 2001, Bialystok.

¹⁹ Notes of the Polish Ministry of Justice on Roma rights cases registered in Prosecutors Offices in response to a request by the *ERRC*, undated, received by the *ERRC* on May 17, 2002.

²⁰ *European Roma Rights Center* interview with Mr Grzegorz Siwak, June 21, 2001, Nowy Sacz.

²¹ *European Roma Rights Center* interview with Mr Grzegorz Siwak, June 21, 2001, Nowy Sacz.

²² Letter from Grzegorz Siwak to the Regional Prosecutor, dated May 6, 1999, delivered to the Registry Office on May 6, 1999 (stamped). See also Medical report No. 16742, dated May 4, 1999.

into the flat, and Ms Siwak led her family out the back door. Eighteen-year-old Ms Fatima Siwak called the police around 11:30 PM.²³ Officers reportedly arrived after about half an hour. When the skinheads saw the police they ran away. Ms Sabina Siwak told the *ERRC*: “The police did not follow them. They said they did not have orders to do so. I think they were afraid.”²⁴

The Siwak family told the *ERRC* that a similar attack occurred on May 5, 1999, around 11 PM, when many of the same individuals returned to terrorise their family. Throwing Molotov cocktails, according to Mr Grzegorz Siwak, the skinheads destroyed an automobile belonging to 60-year-old Mr Ferdynand Siwak, Grzegorz Siwak’s father. According to Mr Grzegorz Siwak, when he called the police during this attack, the police told them than they “should defend themselves.” He additionally told the *ERRC*: “Both of my sons had broken ribs and arms.”²⁵ Eighteen-year-old Mr Dariusz Siwak told *ERRC*: “We were running away, and the skinheads caught me and they wanted to hit me in the head, but I covered my head with my arm, so they broke my arm.”²⁶

In a letter sent to the Regional Prosecutor’s Office on May 6, 1999, Mr Grzegorz Siwak described the inappropriate behaviour of the police during incidents of the previous days, provided a list of witnesses and requested that investigation be initiated. An investigation was subsequently opened,²⁷ but on October 12, 1999, the prosecutor terminated the investigation. The justification for the decision to terminate the investigation was a lack of evidence.²⁸ Mr Grzegorz Siwak appealed the decision. In a letter to the *ERRC*, the Ministry of Justice states that two suspects were charged with crimes in connection with the May 3, 1999, attack. The case was still pending as of May 2002.²⁹

Harassment against the Siwak family has reportedly continued. When the *ERRC* interviewed them in June 2001, Mr Grzegorz Siwak and his daughter, Ms Natalia Siwak, reported that their windows were regularly smashed by local non-Roma. The family also received telephone threats, telling them to leave Poland. Members of the Siwak family, especially their children, had been verbally abused in the centre of town. Mr Grzegorz Siwak explained the situation in a letter to the regional court: Although police conducted cursory investigations, the cases were always dismissed for insufficient evidence. “My son Dariusz Siwak was threatened by a stranger in the main square, who told him that they would cut his head off if he and his family went to the hearing.”³⁰

VI. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Forced Separation of Romani Children from Their Families

²³ *European Roma Rights Center* interview with Ms Fatima Siwak, June 21, 2001, Nowy Sacz.

²⁴ *European Roma Rights Center* interview with Ms Sabina Siwak, June 21, 2001, Nowy Sacz.

²⁵ *European Roma Rights Center* interview with Mr Grzegorz Siwak, June 21, 2001, Nowy Sacz. See also medical reports No. 16941 and No. 17033, dated May 5, 1999.

²⁶ *European Roma Rights Center* interview with Mr Dariusz Siwak, June 21, 2001, Nowy Sacz.

²⁷ Letter from Grzegorz Siwak to the Regional Prosecutor, dated May 6, 1999, delivered to the Registry Office on May 6, 1999 (stamped).

²⁸ *European Roma Rights Center* interview with Mr Grzegorz Siwak, June 21, 2001, Nowy Sacz.

²⁹ Notes of the Polish Ministry of Justice on Roma rights cases registered in Prosecutors Offices in response to a request by the *ERRC*, undated, received by the *ERRC* on May 17, 2002.

³⁰ Letter addressed to Regional Court, Department of Criminal Justice (*Sad Rejonowy, Wydział II Karny, ul. Pijarska 3, Nowy Sacz*), stamped by Submission Office (*Biuro Podawcze*) on August 29, 2000.

As to Article 9, the *ERRC* is concerned about a pattern of forced separation of alien Romani children from parents during expulsion procedures from Poland.³¹ Immigration raids taking place in big market places often result in children being taken into state care, with inadequate attention paid to the best interests of the child, in direct violation of paragraph 1 of Article 9 of the Convention. The *Helsinki Foundation for Human Rights* reported that since 1997, police have often placed Romanian Romani children in children's homes, without proper and full judicial review and without taking into consideration the best interest of the child.³² Parents of children remanded into state care in this way are usually not provided with information concerning the whereabouts of their children, much less with the opportunity to maintain personal relations and direct contact or to reunite with them, in violation of paragraphs 3 and 4 of Article 9.

For instance, in June 1996, according to the local Polish press, police raided and tore down a Romani camp under the Grotta-Rowecki Bridge in Warsaw.³³ According to the U.S. Department of State Poland Country Report for 1996, the police made 113 arrests and subsequently expelled all 113 persons to Ukraine.³⁴ Local media reported that the police used particularly brutal methods against all Roma, even women and children, and Mr Pawel Lechowski, who was an eyewitness to the deportations, told the *ERRC*: "There was a lot of violence against Romani women and children."³⁵ According to Mr Lechowski, a 12-year-old boy and a 9-year-old girl were left behind in the wake of deportations on the demolished site. Police told Mr Lechowski that the mother of the children was out of Warsaw and had "missed the deportation." When Mr Lechowski asked the police about the fate of the children, he was just told that their instructions were "not to bring any more Romanian Roma to the police station."³⁶

Mr Lechowski reported to the *ERRC* that he has witnessed other incidents of forcible expulsion of Roma from Poland, and that each time authorities did not take any measures to prevent forcible separation of families. He told the *ERRC* that children were also left behind during the expulsion of Romanian Roma from the Salwador neighbourhood of Kraków in 1994. He reported that, during the eviction, children were initially put in vans with their mothers, but at the time of interrogation, adults were reportedly separated from their children. "After the Roma were ordered to leave Poland within 48 hours, no one provided assistance for parents' reunion with their children. The police said that this was no longer their business," Mr Lechowski told the *ERRC*.³⁷

The *ERRC* has learned about other instances of forced separation of Romani children from their parents. A number of Romanian Romani women claimed that after they had given birth in maternity hospitals in Poland, the hospital staff refused to give them their newborns, in direct violation of Article 9, paragraph 1 of the Convention. For example, in 1993, Ms Elena Dumitru, who was 33 years old at the time, gave birth to a daughter in a maternity hospital in Szczecin. She left the hospital after one week, making it clear to the staff that she would come back in one week, after securing suitable

³¹ The collective expulsion of aliens is banned under Article 4 of Protocol 4 to the European Convention on Human Rights.

³² *European Roma Rights Center* interview with Ms Irena Rzeplinska, June 26, 2001, Warsaw.

³³ The event was covered in the Polish press in many articles, including: "Pytanie dnia" and "Jak wrócić do Polonia", *Gazeta Wyborcza*, June 21, 1996, pp.1-2; "Po deportacji", *Gazeta Stołeczna* (GW), June 21, 1996.

³⁴ U.S. Department of State, "Poland Country Report on Human Rights Practices for 1996", Section 5, available at: http://www.state.gov/www/global/human_rights//1996_hrp_report/poland.html.

³⁵ *European Roma Rights Center* interview with Mr Pawel Lechowski, June 28, 2001, Kraków.

³⁶ *European Roma Rights Center* interview with Mr Pawel Lechowski, June 28, 2001, Kraków.

³⁷ *European Roma Rights Center* interview with Mr Pawel Lechowski, June 28, 2001, Kraków.

accommodation. When she returned after that week, the hospital reportedly refused to give her child. Ms Dumitru explained: “I came back in a week's time and the hospital refused to give me my child, saying that the name in my passport was spelled differently than on the birth certificate of the child, which meant that I am not the mother of the child.”³⁸ The hospital staff did not allow Ms Dumitru to see her daughter. Ms Dumitru told the *ERRC*: “When I came to see the child in the nursery, they found excuses for not letting me to see her. For example, they told me the child is ill, or that it was not the right time. They said things like, ‘you have to come later, it is feeding time.’”³⁹

Ms Dumitru subsequently contacted Mr Pawel Lechowski in Kraków, who helped her to seek legal counsel. Approximately two weeks later she returned to the hospital with Mr Lechowski, and requested to see her child. The hospital refused to give her any information about her child, and said that, because she had not shown any interest in the child, the child had been placed in a foster care nursery in Stargard Szczecinski. The hospital official said that any dispute over her motherhood would be decided by the court.

Visa restrictions for Romanian citizens, as well as the authorities’ failure to deal with Ms Dumitru’s requests for family reunification in a humane, positive, and expeditious manner, in violation of Article 10, paragraphs 1 and 2 of the Convention, severely impeded Ms Dumitru’s fight for custody. Soon after Ms Dumitru returned to Kraków from Szczecin, she was deported to Romania because her legal stay of one month in Poland had expired. In the hope of reuniting their family, over the following few years, Ms Dumitru and her husband returned three or four times to Szczecin, despite two deportations that made their return challenging. According to Mr Lechowski, they found an attorney in 1994, with the help of *Helsinki Foundation for Human Rights*. Mr Lechowski told the *ERRC*: “We hired a lawyer from Szczecin, named Maszalo. Ms Dumitru and her husband travelled from Kraków to Szczecin regularly, as circumstances allowed.”⁴⁰

Ms Dumitru told the *ERRC*: “The maternity was never proven. There were no tests conducted at all. There were accusations brought against me by the police in Szczecin that I was begging in the street with the child and that I would use the child for begging again.”⁴¹ Ms Dumitru remains the legal mother of the child, though the child has been placed with a Polish family for upbringing. The child is now over eight years old. As of June 27, 2001, Ms Dumitru had not given up hope of fighting for custody.⁴² In the meanwhile, the child was forcibly separated from her family, in violation of Article 9 of the Convention; was stripped of her right to know and be cared for by her parents, in violation of Article 7 of the Convention; and was deprived of her right to preserve her personal identity, including family relations, in violation of Article 8 of the Convention.

VII. BASIC HEALTH AND WELFARE

Discrimination in Housing

As to Article 27, the *ERRC* is concerned about the standard to living of Romani children, in particular in the area of housing. Many Roma in Poland live segregated from the rest of the population, inhabiting sub-standard housing, barracks or shanties, with insufficient sanitation, and without potable drinking water, electricity or gas. Romani families are often denied requests for municipal housing. When municipal flats are inhabited by Romani tenants, authorities frequently fail to meet their

³⁸ *European Roma Rights Center* interview with Ms Elena Dumitru, June 27, 2001, Kraków.

³⁹ *European Roma Rights Center* interview with Ms Elena Dumitru, June 27, 2001, Kraków.

⁴⁰ *European Roma Rights Center* interview with Mr Pawel Lechowski, June 28, 2001, Kraków.

⁴¹ *European Roma Rights Center* interview with Ms Elena Dumitru, June 27, 2001, Kraków.

⁴² *European Roma Rights Center* interview with Ms Elena Dumitru, June 27, 2001, Kraków.

obligation to maintain or renovate the housing.⁴³ The *ERRC* has also documented Roma living in overcrowded flats, often officially declared “unsuitable for human habitation.”

According to the Kraków-based Romani activist Mr Marian Gil, when Roma request suitable housing from the municipality, applications are almost always refused. He told the *ERRC*: “I was on the commission for flat distribution in Kraków for three years and in that whole time, only once were Roma given a flat by the housing commission. That was the case of a mother of seven. But otherwise, 80 percent of the Romani families on the waiting lists have not been given a flat in the last 10 years.”⁴⁴ The *ERRC* obtained several testimonies from Roma who indicated widespread suspicion that municipalities favour non-Romani applicants. In Tarnów, 43-year-old Mr Z.S. who, at the time that the *ERRC* visited him, lived in a run-down one-room flat with his wife and their three children, shared the following experience:

I have been waiting to move to a bigger apartment for several years, but I cannot get better accommodations than I have now. Three or four years ago, I went to the Mayor’s Office to ask about possibilities to move into another one, and was told, ‘What? You Gypsies know how to do it. You don’t need permission for that; you just go and take one, no?’ I told them that I wanted them to help me find a bigger apartment because I needed it for my family. They said, ‘Do we have to teach you how to do it? Don’t you know how to do it yourself?’ Then, finally, our case was taken up. First, a special commission in charge of apartments and their habitability came here and stated that this flat didn’t meet the standard requirements for a family like ours. Then they held a meeting at the mayor’s office, but it didn’t result in anything. Later, through informal contacts, I heard that a woman from the municipality had vetoed the decision when she heard my name. She is supposed to have said, ‘No. He should not get an apartment. He is a Gypsy and a criminal. He doesn’t deserve it.’⁴⁵

The *ERRC* also documented the difficulties of Ms Renata Mirga, a mute 23-year-old Romani woman who was born with a birth defect that caused a serious stroke in her early childhood, in securing adequate housing. According to Polish constitutional provisions,⁴⁶ Ms Mirga should be placed in adequate living conditions. However, though her parents placed a request with the government during her childhood in order to place her on a waiting list, she has remained on a waiting list for such a flat for over 20 years and at the time of a visit by the *ERRC* on June 22, 2001, she was living in a ghetto in Nowy Sacz. During late 1999 and early 2000, while pregnant, she reportedly applied three times for a new flat with the Housing Commission in Nowy Sacz, but all of her requests were rejected. On June 11, 2000, she gave birth to a daughter, Fatima Szczerba, who was born with a serious heart condition and a kidney disorder.⁴⁷ On May 31, 2001, Ms Mirga again requested placement in a standard flat. In a

⁴³ For a general overview of housing issues facing Roma in Poland, see Kwiatkowski, Roman, Leszek A. Gruszynski, Janusz Henryk Pawła, and Jan Pasternak, “Opis Położenia Społecznego Romów w Polsce”, *Stowarzyszenie Romów w Polsce*, 1999.

⁴⁴ *European Roma Rights Center* interview with Mr Marian Gil, June 23, 2001, Kraków-Nowa Huta.

⁴⁵ *European Roma Rights Center* interview Mr Z.S., June 7, 1997, Tarnów.

⁴⁶ The Polish Constitution includes legal provisions addressing the needs of persons with disabilities. Article 68, Section 3 of the Polish Constitution states: “Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age.” Article 69 of the Polish Constitution states: “Public authorities shall provide, in accordance with statute, aid to disabled persons to ensure their subsistence, adaptation to work and social communication.”

⁴⁷ Medical certificate dated February 2, 2001, undersigned by Dr Wiesław Urbanowicz, the head doctor of the Urological Department of the Urological Clinic, the Children’s Department in Kraków.

response dated June 12, 2001, the Housing Commission rejected her application, responding that she had not provided any new evidence about her health.⁴⁸

Similarly, in Limanowa, Malopolska province, Mr Jan Ciureja, a 30-year-old Romani man, was reportedly not provided with a flat because of protests by local non-Romani inhabitants. He told the *ERRC*: “There was a petition against me moving into a better place. I have 10 children. I wanted to move to a better and bigger flat and have applied for one. However, I have repeatedly received responses from the municipality that there is no flat for me, because there is a lack of flats.”⁴⁹ The living standards in the Limanowa settlement in which Mr Ciureja was living were, at the time of the *ERRC* visit, deplorable. Approximately 80 Romani inhabitants were living in 15 wooden shacks with no insulation, mould on the walls and no water supply.

Mr Tadeusz Gabor, the Romani activist from Laskowa Górna, told the *ERRC*: “Municipalities are under pressure from members of the local non-Romani population. For example, one Romani man from the settlement in Limanowa built himself a better house on the place where his old shack was already standing. Locals became very upset by this. He received several letters demanding that he demolish his new house.”⁵⁰

Authorities frequently fail to provide basic infrastructure to Romani families living in settlements or in municipal housing. In Laskowa Górna, Malopolska province, authorities even reportedly asked the *Association of Roma in Poland* to finance roof repairs of municipal housing in the settlement of Kroscienko.⁵¹ According to the findings of a report by the non-governmental organisation *Stowarzyszenie Romów w Polsce* on the living conditions of the Roma throughout Poland, 29.7 percent of Romani households have no access to gas, 23 percent of Romani households have no running water, 16.2 percent of Romani households rely upon an outdoor toilet, 15.9 percent have insufficient sanitary conditions, 14 percent have no heating, 11.9 percent have insufficient amounts of running water and 11 percent have no sanitary method of raw sewage removal.⁵² In several areas, particularly the south, central, and north-eastern parts of Poland, over 70 percent of Romani households reportedly lack access to one or more of the following: Electricity, potable water, adequate toilet facilities and raw sewage waste removal and/or adequate heating.⁵³

Discrimination in Access to Health Care

As to Article 24, despite explicit constitutional provisions protecting the right of access to health care for all Polish citizens,⁵⁴ Roma in Poland are in practice blocked from exercising this right. The access

⁴⁸ Letter no. WML.II-7142/1/94 dated June 12, 2001, on file at the *ERRC*.

⁴⁹ *European Roma Rights Center* interview with Mr Jan Ciureja, July 1, 2001, Limanowa.

⁵⁰ *European Roma Rights Center* interview with Mr Tadeusz Gabor, June 21, 2001, Laskowa Górna.

⁵¹ Letter from the municipality’s Social Welfare Office, No. GOPS/2127/17/00 from July 31, 2000 signed by Antonina Jageta.

⁵² Kwiatkowski, Roman, Leszek A. Gruszynski, Janusz Henryk Pawela, and Jan Pasternak, “Opis Polozenia Społecznego Romów w Polsce”, *Stowarzyszenie Romów w Polsce*, 1999, p.33.

⁵³ See Ministry of Internal Affairs and Administration, Department of Inhabitants, Section for National Minorities, *Notatka informacyjna z wizyty studyjnej w Wojewodztwie Malopolskim, która odbyła się w dniach 5-7 June 2000*, p.1. The worst housing conditions observed by the researchers were found in Nowy Sacz, Korszary, Maszkowice, Jaworki, Krosnica, Ostrowsko and Czarna Góra-Kamieniec.

⁵⁴ Article 68 of the Polish Constitution states: “Everyone shall have the right to have his health protected. Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation.”

of Romani persons, including children, to health services is often severely impeded because many Roma live in segregated settlements, in isolated villages or on the outskirts of the cities, in areas with neither public transportation nor readily available telephone service.

Moreover, the extremely poor living conditions of Roma exacerbate their poor health. Frequently Romani settlements do not have access to clean drinking water or sanitation facilities. The state of health for Roma living on settlements is deteriorated to such a degree that many have become a public health threat. For instance, according to an official Polish government document, Roma in the Malopolska province suffer from viral hepatitis B and tuberculosis. Additionally, the document states that asthma, pneumonia, bronchitis, anaemia, and hyperthyroidism are endemic among Roma in the Malopolska province.⁵⁵

The Legi-Gorzaków settlement in the Malopolska province is illustrative of this situation. According to the director of the school in the Malopolska province attended by Romani children from the Legi-Gorzaków settlement, their health is very poor: “The children have various illnesses –some of them spit blood.”⁵⁶ To address the serious health problems of Roma of the Legi-Gorzaków settlement, in 2001, the local authorities in the nearby village of Lacko, the Social Security Office and a local branch of the *Association of Roma in Poland* organised a collective weekend check-up, called “White Sunday”, which took place on July 1, 2001. According to Dr Janusz Niemiec, a doctor involved in the 2001 Legi-Gorzaków “White Sunday” event, ailments in the settlement included infected upper respiratory systems, bronchitis and asthma. Some of the Roma examined also suffer from heart disease and several cases of tuberculosis were suspected.⁵⁷ According to a letter to local Romani activist Mr Tadeusz Gabor from the local government, other ailments afflicting local Roma included depression, especially among adults, and vitamin deficiencies. The letter further stated that bronchitis of the upper respiratory system was especially common among children. It also noted, “The doctors concluded that the types of illnesses were connected directly to the social and housing conditions in which Roma live.”⁵⁸ Mr Ciureja told the *ERRC* that he was concerned that the one-off “White Sunday” event was no real substitute for regular medical care.⁵⁹ Dr Niemiec told the *ERRC* that the Roma would have to find their own practitioners and that this would be difficult because a lot of doctors in the area refuse to treat Roma.⁶⁰

VIII. EDUCATION

As to Articles 29 and 28 of the Convention, the vague, general picture presented by the Government Report in its report fails to address any disparities between the situation of the majority of the children in the Polish educational system and the situation of children belonging to disadvantaged minorities or socio-economic groups. As a consequence, the Government fails to report systemic violations of the rights to access to education and to quality, child-centred, and empowering education, as protected by Article 28, paragraph 1 (a), (b), (d), and (e), and Article 29, paragraph 1 (a) of the Convention.

⁵⁵ See Ministry of Internal Affairs and Administration, “Pilot Government Programme for the Roma Community in the Malopolska Province for the Years 2001-2003”, p.13.

⁵⁶ *European Roma Rights Center* interview with T.M., July 1, 2001, Legi-Gorzaków.

⁵⁷ *European Roma Rights Center* interview with Dr Janusz Niemiec, July 1, 2001, Legi-Gorzaków.

⁵⁸ Letter to Mr Tadeusz Gabor from the Director of the Section of Hygiene and Public Health in the Mayor’s Office of Nowy Sacz, July 9, 2001.

⁵⁹ *European Roma Rights Center* interview with Mr Jan Ciureja, July 1, 2001, Legi-Gorzaków.

⁶⁰ *European Roma Rights Center* interview with Dr Janusz Niemiec, July 1, 2001, Legi-Gorzaków.

The *ERRC* has documented such violations with respect to Romani children. These violations take the form of wide-spread discriminatory and segregationist practices, such as the segregation of Romani children into so-called “Gypsy classes”⁶¹ or classes for the mentally disabled, racially-motivated abuse in school, and the apathy of Polish school authorities in combating low attendance and high drop-out rates among Romani school-age children. Some of these violations of the right to education, such as the segregation of Romani children into “Gypsy classes”, are the result of educational programmes devised and implemented by the central and local authorities in Poland.

Segregation in “Gypsy classes”

In 1992, the Polish government implemented a programme that began grouping Romani children into segregated classes which offered lower quality education.⁶² Although the original intent of the programme appears to have been motivated by magnanimous and benevolent sentiments, the implementation of the project has in practice resulted in forced segregation of and inferior education for Romani children. Many of these so-called “Gypsy classes” are still in operation today.

The project was initially developed by Father Stanislaw Opocki, a Catholic priest in the Malopolska province who had been experimenting with lower curricula classes for Romani students in the Nowy Sacz area since 1990.⁶³ His initial idea was to create separate classes for Romani children in order to help them successfully move on into integrated classes after three years. The special classes were supposed to be filled on a voluntary basis by parents who wanted their children to participate in the programme.

When Father Opocki approached the Polish Government with the idea to adapt and expand his local initiative in 1991, Polish authorities welcomed the project, and, in the absence of a national educational policy directed toward Roma, Father Opocki’s plan was readily and quickly implemented. The Ministry of National Education approved the programme (the “National Programme of Special Education for Roma”) on July 8, 1992.⁶⁴ The programme was implemented such that “Gypsy classes” were set up in schools for all Romani students, whether or not children in these classes were real dropouts or were transferred from integrated classrooms. These classes had lower education standards and fewer requirements, and covered only three initial school grades, with no suggestion as to what the school should do with the students afterwards. In practice, nearly all Romani children, with only a few exceptions, and irrespective of their age, were enrolled into such “Gypsy classes,” irrespective of their age or academic performance.⁶⁵ Moreover, often Romani students were forced into these separate classes without the consent of their parents. In Mielec, in 1997, for instance, the *ERRC* was told:

Our children used to go to school together with the other children, but four years ago, the school administration suddenly decided that a special Gypsy class would be established. They

⁶¹ Government programmes refer to these classes as “Roma classes” or “classes for Roma”. However, in localities where they exist, they are widely popularly known to both Roma and non-Roma alike as “Gypsy classes”.

⁶² Ministry of National Education, “Information Concerning the Education of Children and Youths of Roma Origin in Poland,” presented at the Organisation for Security and Cooperation in Europe, Implementation Meeting in Warsaw, October 24, 2000, p.3.

⁶³ Opocki, Stanislaw, “Moje doswiadczenia w zakresie edukacji Romów”, in *Social and Legal Situation of Gypsies in Central and Eastern Europe*, proceedings of an international conference on Roma, June 16-17, 1996, in Gorzów Wielkopolski, Poland, p.22.

⁶⁴ Nowicka, Ewa, “Pluralism czy izolacja. Polityka oswiatowa wobec osiadlych Romów w Polsce”, in *U nas dole i niedole*, Nowicka, Ewa, ed., Kraków: Zakład Wydawniczy, NOMOS, 1999, p.44.

⁶⁵ See Andrzej Mirga, “Addressing the Challenges of Roma Children’s Education in Poland – Past and Current Trends and Possible Solutions,” available at: <http://www.per-usa.org/PolandRomaeducation.doc>, p.2-5.

didn't even come here to tell us; we just heard it from our children when they came home from school and told us that they were going to be put in separate classes from the other children.⁶⁶

Initially, Father Opocki worked with educational authorities in Nowy Sacz, who agreed to conduct this experiment on Romani children in the first to the third grades. Subsequently, classes were founded in Maszkowice, Lososina Górna and Limanowa. In January 1993, the Ministry of National Education requested that such classes be implemented throughout the entire province: in the 1993-94 school year, there were 14 "Gypsy classes" in Nowy Sacz, Malopolska province; Limanowa, Malopolska province; Maruszyna, Malopolska province; Maszkowice, Malopolska province; Czarny Dunajec, Malopolska province; Tarnów, Malopolska province; Mielec, Sub-Carpathia province; Lublin, Lublin province; Stalowa Wola, Sub-Carpathia province; Pulawy, Lublin province; Zabrze, Silesia province; and Suwalki, Podlasie province. The practice continues: as recently as spring 2002, school authorities were reportedly initiating new "Gypsy classes" in places such as Piotrków Trybunalski, near Opoczno.

Thus, the program resulted in the de facto segregation of Romani students in a large number of localities. Lower curricula and different age and academic levels among the students in these classes resulted in much lower quality education for many Romani students. Romani parents are concerned that, since the classes came into being, their children have learned nothing at school. As one observed:

What is the purpose of this new system they created? If it is to help us, then they have failed completely. Our children learn nothing at school. The teachers are not properly educated and they cannot teach. Our kids get the least qualified teachers, the ones who couldn't get jobs anywhere else. When I ask my son what he did in school, he says, "Nothing."⁶⁷

According to Mr Andrzej Mirga, research into the curriculum and knowledge of Romani children in "Gypsy classes" revealed that the majority of the children do not even know how to read basic letters and cannot do simple counting.⁶⁸ This reduction of the Romani pupils' curriculum to a minimum is indicative of the government's view that the learning ability of Romani children is minimal.⁶⁹ According to Mr Mirga, the pedagogical goals of these classes are derived from racist stereotypes. For example, the curricula of these classes include lessons teaching children to respect other people's property and instructing the children in basic hygiene, based primarily on the widespread perception that "Gypsies are dirty."⁷⁰ Furthermore, the language of the Ministry of Education's programme proposal itself reflects racist stereotyping and discriminatory ideas. The official programme describes Romani children as "by nature aggressive and disheartened" and states: "The teacher should pay great attention to the behaviour of the child. Children who come to school are lazy, absent-minded, explosive, aggressive and don't know how to behave during class."⁷¹

In addition to lowering the quality of the education offered in these classes, school authorities also relegated them to sub-standard, often overcrowded facilities. A letter from the *Association of Roma in Poland* and many Romani parents to school officials in Nowy Sacz, states that in a number of schools children of various ages were placed in the same grades, segregated from the rest of their classmates in

⁶⁶ *European Roma Rights Center* interview with Ms A.H., June 8, 1997, Mielec.

⁶⁷ *European Roma Rights Center* interview with Ms T.K., June 9, 1997, Nowy Sacz.

⁶⁸ Mirga, p.4.

⁶⁹ For more on the government's language used to describe Romani students in Poland and the view implied in this language, see: Nowicka, p.47.

⁷⁰ *European Roma Rights Center* interview with Mr Andrzej Mirga, June 23, 2001, Kraków.

⁷¹ For more on the government's language used to describe Romani students in Poland and the view implied in this language, see: Nowicka, p.47.

inadequately equipped, physically separate, lower quality buildings.⁷² In Lososina Górna, at the time of an *ERRC* visit in 1997, the “Gypsy class” had been placed in an old fire department building and was consequently entirely isolated from the regular school. According to Mr Andrzej Mirga, as of 2001, 42 school-aged children from the Maszkowice settlement, in the Malopolska province, were reportedly ordered to attend a single “Gypsy class” in the local school. All children from the age of 7 to 14 were put in a single classroom of approximately 20 square meters, and the entire class had only one teacher, who taught according to a substandard curriculum.⁷³

Thus, removal of Romani students from integrated classrooms altogether is particularly detrimental to those students’ progress in school. Furthermore, there have been no clear pronouncements by Polish officials as to how Romani children are to be transferred back to integrated public school classes once they have completed the separate schooling envisioned in the “Gypsy classes” school. In practice, according to most Romani parents and school authorities with whom the *ERRC* spoke, most Romani children dropped out of school after completing the four years of “Gypsy classes.”

Segregation in “Special Classes” for the Mentally Disabled

In some instances, after graduating from “Gypsy classes”, Romani children have been transferred to classes for the mentally disabled. For instance, in the southern Polish town of Czarny Dunajec, many of the Romani students were enrolled in these “special classes” at the time of the *ERRC* visit in 2002. The Romani students had been placed in this class reportedly as a result of an investigation into the mental health of the pupils in the “Gypsy class”, launched by a new school director in Czarny Dunajec in the school year 1996-97. According to Mr Dariusz Kosakowski, who taught the “Gypsy class” in that community, these tests ignored the language difficulties of the children. Mr Kosakowski told the *ERRC* that the psychologist declared the pupils “lightly handicapped”, a decision Mr Kosakowski disputed.⁷⁴ This decision caused a change of the class’s curriculum. A new curriculum for “special classes” replaced the regular curriculum for the Romani children in the school. About half of the children from the Roma settlement in Czarny Dunajec attended these classes for the mentally disabled at the time of an *ERRC* visit in April 2002, while the others attended regular classes.

According to Mr Marian Gil of the Kraków-based *Association of Roma in Poland*, over 25 percent of the Romani children in the area of Nowa Huta attend classes for the mentally disabled. Because the Romani children of Nowa Huta do not, for the most part, speak Polish, some of them are put in “delayed” classes for those with slower development. Mr Gil told the *ERRC* that the schools do not seek agreement from Romani parents, but rather place Romani children there without their approval.⁷⁵

Mr Tadeusz Gabor told the *ERRC* that, in Nowy Sacz, the classes for mentally disabled children – attended by many Romani children in Nowy Sacz – do not have sufficient equipment or adequate space. For example, in a local elementary school the *ERRC* visited in 1997, 39 Romani children were supposed to sit around six tables in a room of 15 square metres.⁷⁶

Failure to Combat Low Attendance and High Drop-out Rates

As to Article 28 (e), Polish school authorities have taken insufficient measures to combat low attendance and high dropout rates among Romani students. According to estimates of school superintendents in 16 provinces nation-wide, in the 2000/2001 school year, approximately 30 percent

⁷² Letter from the *Association of Roma in Poland*, dated Kraków, July 20, 1993 to Ms Janina Gósciej the Province curator of education in Nowy Sacz, p.1.

⁷³ Mirga, p.5.

⁷⁴ *European Roma Rights Center* interview with Mr Dariusz Kosakowski, April 11, 2002, Czarny Dunajec.

⁷⁵ *European Roma Rights Center* interview with Mr Marian Gil, June 19, 2001, Kraków.

⁷⁶ *European Roma Rights Center* interview with Mr Tadeusz Gabor, June 21, 2001, Laskowa Górna.

of school-aged Romani children in Poland did not meet their obligation to attend school. According to their estimates, in that year, there were 2,923 school-aged Romani children to whom obligatory schooling applied nation-wide, of whom 878 were not meeting minimum attendance requirements.⁷⁷

The educational level of Roma in Poland is very low in general; illiteracy rates are high, and the number of Romani students who complete higher education is extremely small. Polish officials state that statistics on rates of literacy by ethnicity are not collected in Poland. However, it is widely acknowledged by the Polish government, as well as by Romani activists, that illiteracy rates are much higher among Roma than among non-Roma. Among Romani families interviewed by the *ERRC* in visits in 1997 and 2001, approximately every fifth Romani child had finished his or her education without ever completing elementary school – in many cases, repeating classes over and over again and making no progress, although they continued to fulfil their obligation to attend school. According to some estimates, 90 percent of Romani children do not attend school beyond the fourth or fifth class.⁷⁸ While 7 percent of the Polish population held a university degree in 1998/1999,⁷⁹ the percentage of Roma completing higher education is reportedly far lower. Official statistics on Roma and higher education are not available. However, according to one estimate, the number of persons of Romani origin with university-level education in Poland was no more than 30 persons in total.⁸⁰

Abuse in school

As to Article 28, paragraph 2, the *ERRC* is concerned that Romani students are subjected to abuse from school officials and non-Romani students. Such cases of abuse are rarely investigated—much less remedied—by school officials or law-enforcement agencies. Roma in several communities in Poland told the *ERRC* that teachers treat them differently from the other children and that non-Romani children bully them.

For instance, in Debica, Sub-Carpathia province, Romani parents reported that, as a result of being treated with hostility by teachers and non-Romani children, many of their children do not want to go to school after a few months. As one parent explained: “They come home crying, telling us that the other children call them bad names. Sometimes, the other children even beat them, and the teachers don’t do anything about it...What are we supposed to do when they come home crying and tell us that they hate school and don’t want to go any more?”⁸¹ In Swiebodzice, Lower Silesia province, Roma reported similar experiences. At the time of an *ERRC* visit in 1997, Mr J.L. told the *ERRC* that he had just learned from his brother that his 12-year-old nephew refused to go to school after having been repeatedly beaten and humiliated by non-Romani children.⁸²

Romani students appear to be the target of excessive, often unprovoked, disciplinary actions from teachers and school officials and employees. In the southern Polish town of Tarnów, the *ERRC* met with 43-year-old Mr Z.S., whose oldest daughter, 9-year-old R.D., was in the third grade of primary school. The child told the *ERRC* that the first year was especially difficult in school, because the teacher always made her sit in the back of the classroom and never paid attention to her.⁸³ The *ERRC* spoke with Ms R.A., an 18-year-old Romani woman from Tarnów, who reported that, throughout the

⁷⁷ Ministerstwo Edukacji Narodowy, “Program nauczania początkowego”, p.2

⁷⁸ Opocki, p.21.

⁷⁹ Central Statistical Office, “Statistical Yearbook of the Republic of Poland 1999”, Warsaw, p.250.

⁸⁰ Andrasz, Adam, *Dlaczego emigracja*, Report to the Centre for Roma Culture in Poland, unpublished.

⁸¹ *European Roma Rights Center* interview with Ms Janina Sadowska, June 8, 1997, Debica

⁸² *European Roma Rights Center* interview with Mr J.L., June 15, 1997, Swiebodzice.

⁸³ *European Roma Rights Center* interview with R.D., June 7, 1997, Tarnów.

course of her elementary school and secondary school career, her teachers treated her with prejudice. She told the *ERRC* that she believed that teachers in Tarnów had repeatedly given her lower grades because of her ethnicity. According to Ms R.A., her biology teacher could not come to terms with the fact that she had better exam results than her non-Romani classmates. “My biology teacher, Ms L., said that she could not give me a better mark in biology. My result was between 4 and 5. I asked why, and she said that there was no way that a Gypsy could be better than other children.”⁸⁴

Prejudice against Romani students sometimes finds violent forms of expression. In a violent and unremedied incident in Tarnów, on October 1, 1999, around 12:30 PM, Adrian Wójcik, a 14-year-old Romani school boy, was reportedly severely beaten on public school grounds by a member of the school’s technical staff, Mr Józef Jachym, who was, according to victim and witness testimony, drunk at the time of the attack.⁸⁵ School officials failed to take action to protect the victim and punish the aggressor.

The incident took place at the Stanislaw Staszic Primary School No. 7, on Poniatowskiego Street. Adrian Wójcik told the *ERRC* that he and his two friends Lukasz Galara and Wojciech Lis were leaning out of the classroom window, and Adrian Wójcik spat onto the pavement as Mr Jachym was passing by. Mr Jachym came to the classroom and told the teacher, Mr Jerzy Kowalczyk, that he was taking Adrian Wójcik to the director for disciplinary action. Adrian Wójcik told the *ERRC* that Mr Jachym took him out of the classroom, beat him with his fists, and then, after the child fell to the floor, kicked him in the ribs. While Adrian Wójcik was lying on the floor, the door of the classroom opened and his friends Lukasz Galara and Wojciech Lis came out, followed by the whole class, and Mr Kowalczyk. Mr Kowalczyk reportedly did not interfere to stop Mr Jachym from assaulting Adrian Wójcik; according to Adrian Wójcik, the teacher took the whole class back into the classroom and continued the lesson. Adrian Wójcik’s two friends stayed with him and started helping him get up to go home. As they left the school, Mr Jachym reportedly followed them and asked them where they were going. According to Adrian Wójcik and his friends, Adrian Wójcik told Mr Jachym that he was going home to tell everything to his parents. Adrian Wójcik told the *ERRC* that Mr Jachym then jumped on him and started trying to strangle him. His two friends intervened and forcibly restrained Mr Jachym, pulling Mr Jachym away from him. Mr Jachym then left, and Adrian Wójcik’s two friends, joined by Jakub Prokop, another classmate, walked Adrian Wójcik home.⁸⁶

After Adrian Wójcik arrived home, his mother, Ms Roza Wójcik, went to the school and requested an investigation. She stated that “the director of the school said he wanted to keep the incident quiet.” According to Ms Wójcik, the director also refused her access to the telephone to call for police and medical help. Ms Wójcik told the *ERRC* that several students, Romani children from a foster care institution, were standing nearby at the time, and they witnessed the director’s refusal to provide her access to the telephone. Neighbours living near the school on Cegielniana Street provided her with access to a telephone and Ms Wójcik called the police and took her son to the emergency room at the hospital.⁸⁷ The *ERRC* saw a medical report, which stated that Adrian had suffered a light concussion, bruises on his head and eyes and lacerations on his entire body, including strangulation marks on his neck.⁸⁸ Adrian Wójcik was in the local hospital for seven days.

⁸⁴ *European Roma Rights Center* interview with Ms R.A., June 20, 2001, Tarnów.

⁸⁵ The incident was described by Adrian Wójcik in an *ERRC* interview, January 19, 2002, Tarnów, and acknowledged in a letter from the deputy mayor of Tarnów, No. EO14/SP 7/18/99, dated November 11, 1999.

⁸⁶ *European Roma Rights Center* interview with Adrian Wójcik, January 19, 2002, Tarnów. see also *Postanowienie o umorzeniu dochodzenia* Sygn. akt 3 Ds. 1622/ 99, [decision to terminate the investigation], February 29, 2000, p.2.

⁸⁷ *European Roma Rights Center* interview with Ms Roza Wójcik, June 21, 2001, Tarnów.

⁸⁸ See also “Pobicie w szkole”, *Gazeta Tarnowska*, October 4, 1999, p.1.

The police responded to Ms Wójcik's call on the day of the beating; they reportedly came to the school and measured Mr Jachym's blood-alcohol concentration with a breath test. According to Ms Wójcik, the test showed that Mr Jachym had 0.12 percent blood alcohol concentration at the time. Adrian Wójcik's parents subsequently filed a criminal complaint against Mr Jachym.⁸⁹

Ms Wójcik told the *ERRC* that, a day after the incident, Ms Kazimierza Olsuwkam, a teacher working in the school, came to speak to her house and proposed that she not make a big issue of the incident and told her to name a figure that would constitute adequate financial compensation. Ms Wójcik told the *ERRC* that she had not accepted the deal.⁹⁰

The investigation of the incident was first closed by the prosecutor on February 29, 2000, on grounds of insufficient evidence.⁹¹ Ms Wójcik appealed the decision. On May 24, 2000, the prosecutor decided to dismiss the case, citing insufficient evidence against Mr Jachym and his "low societal risk."

In dismissing the case, the prosecutor relied partly on opinions solicited from the school psychologist about Adrian Wójcik and his discipline in school. The psychologist stated that Adrian Wójcik's "memory and hearing are very handicapped; he is also not able to remember visually. He has a tendency toward deformation and filling out of gaps in memory with fictive acts. He experiences disturbances of short-term memory as well as long-term memory and he tends to accuse others, and he assumes hostility of others."⁹² The *ERRC* spoke to Adrian Wójcik on its visits to Tarnów, in June 2001 and January 2002, and questions the validity of these opinions and the circumstances under which they were obtained. The psychologist's negative opinions about Adrian Wójcik's friends, Wojciech Lis and Lukasz Galara, were also used by the prosecutor to support the dismissal of the case. Ms Wójcik told the *ERRC* that the prosecutor did not allow her or the boy's father to be present while the school psychologist questioned their son. Adrian Wójcik's parents also described the style of questioning of the prosecutor as manipulative.⁹³

The *Association of Roma in Tarnów* monitored the case and Mr Adam Andrasz, the head of the association, sent its findings to the Ministry of Education, the *Sejm Commission for National and Ethnic Minorities*, and the Commissioner for Civil Rights Protection (the "Ombudsman").⁹⁴ In response to the organisation's inquiries, the senior specialist in the Office of the Ombudsman wrote a letter, dated December 6, 1999, stating that Mr Andrzej Sasak, deputy mayor of Tarnów, contended that the incident was caused by the inappropriate behaviour of the pupil, Adrian Wójcik.⁹⁵

⁸⁹ *European Roma Rights Center* interview with Ms Roza Wójcik, January 19, 2002, Tarnów; see also Letter from Ms Roza Wójcik to the Regional Prosecutor in Tarnów, dated October 6, 1999.

⁹⁰ *European Roma Rights Center* interview with Ms Roza Wójcik, June 21, 2001, Tarnów.

⁹¹ Decision of the Tarnów Regional Prosecutor to terminate investigation, 3 DS. 1622/99, February 29, 2000. Prosecutor of the Regional Prosecution in Tarnów.

⁹² Decision of the Tarnów Regional Prosecutor to terminate investigation, 3 DS. 1622/99, February 29, 2000. Prosecutor of the Regional Prosecution in Tarnów.

⁹³ *European Roma Rights Center* interview with Ms Roza Wójcik, June 21, 2001, Tarnów.

⁹⁴ Letter from *Association of Roma in Tarnów* to the Regional Educational Department *Kuratorium Oświaty Delegatura w Tarnowie* from October 4, 1999.

⁹⁵ Letter to the Ombudsman from Andrzej Sasak, deputy mayor of Tarnów, No. EO14/SP 7/18/99, November 11, 1999.

IX. SPECIAL PROTECTION MEASURES

Unlawful or Arbitrary Deprivation of Liberty

As to article 37 (b), the *ERRC* is concerned about the recurrent arbitrary deprivation of liberty of Romani children. When such incidents occur, the authorities frequently fail to investigate or prosecute the offending officials.

Thus, in February 1997, in Tarnów, two young sons of Ms Alicja Siwak, the non-Romani widow of a Romani man who had died in 1995, were subject to police harassment and arbitrary deprivation of liberty. The two sons, 14-year-old Patryk Siwak and 18-year-old Sebastian Siwak, were on their way to play billiards in central Tarnów when three police officers in a car stopped them and asked to see their papers. While checking their papers, one of the policemen allegedly grabbed Mr Sebastian Siwak and told him, “We will teach you a lesson, you bloody Gypsy,” and dragged him into the car. Patryk Siwak managed to escape the hands of the police and to run home and alert his mother, who hurried to the scene of the incident. An argument between the police and Ms Siwak followed, during which the police officers allegedly claimed that all they wanted from the boys was to see that their papers were in order. Ms Siwak told the *ERRC* that she filed a complaint against the police, but ended up being charged herself with offending a public official, for which she was fined 50 Polish zloty (approximately 15 euros).⁹⁶ To date, no judicial action had been taken regarding her complaints against the police.

In June 1997, Patryk Siwak was again arbitrarily detained by the police. Ms Alicja Siwak, the mother of the victim, told the *ERRC*:

A policeman came here and said that he needed to search the basement of the building. In the staircase, he pointed at a bicycle we had never seen before and asked if it belonged to us. I said it did not and I told him I had never seen it before. Then, the policeman looked at my youngest son Patryk, who is only 14 years old, and said that he had to go with him to the police station because they wanted to take his fingerprints. I told him he had no right to take my son and he left. The following day I went to the police station and asked them what all this was about. The same police officer told me that he hadn't come for anything special, that no bike had been reported missing or anything, but that they wanted to have Patryk's data simply because they didn't have it yet.⁹⁷

Violations of Procedural Guarantees

As to Article 40 of the Convention, police officials sometimes abusively bring charges against Romani youths and children who, under duress and without a full understanding of the proceedings to which they are subject, confess to crimes they may not have committed or crimes with which they should not have been criminally charged. Moreover, children alleged or accused of having infringed the penal law are often subjected to torture and abuse, and are not granted appropriate procedural guarantees such as the right to legal assistance or to contact their families.

For instance, on May 15, 2001, in Nowy Sacz, for example, a mentally disabled 17-year-old named Pawel Ondycz was interrogated by the police under suspicion of armed robbery. According to his father, Mr Andrzej Ondycz, the police came in the evening. He told the *ERRC*: “Neither I nor my wife was home at that time. My daughter later told us that the police came around 9 PM and took Pawel away.”⁹⁸ Mr Andrzej Ondycz and his wife went directly to the police station after they learned that their son was being interrogated under suspicion of having committed a crime. He told the *ERRC*: “I

⁹⁶ *European Roma Rights Center* interview with Ms Alicja Siwak, June 9, 1997, Tarnów.

⁹⁷ *European Roma Rights Center* interview with Ms Alicja Siwak, June 9, 1997, Tarnów.

⁹⁸ *European Roma Rights Center* interview with Mr Andrzej Ondycz, June 21, 2001, Nowy Sacz.

requested that Pawel be immediately released because Pawel is only 17 years old and he is mentally disabled. I wanted to show a medical certificate⁹⁹ to the officer in charge, proving that Pawel is not fully responsible for his actions, that he is almost deaf in both ears and can't read or write, but neither he nor other police officers would listen to me. In the end I was thrown out and told to come back 48 hours later.”¹⁰⁰

When Mr Andrzej Ondycz returned to the police station on May 21 at around 10 AM, he finally was permitted to see his son. Mr Andrzej Ondycz told the *ERRC*: “I saw Pawel that morning, he looked very bad. He looked as if he had been beaten and his clothes were dirty. He had bruises on his body, in particular his chest and his arms and hands were swollen from beating. Pawel told me that two police officers had beaten him with a truncheon on his hands and on his chest and he had admitted to everything they accused him of. The police officers threatened him that if he did not confess the police officer would take him to the countryside and beat him. One of the police officers told my son: ‘If you do not confess I will take you out of the town. I will beat you up so that neither your mother nor your father will ever recognise you.’”¹⁰¹ According to Mr Andrzej Ondycz, the police told him that Pawel Ondycz had admitted to the crime of armed robbery and had signed a written confession, but they refused to give him any documentation pertaining to the interrogation, with the justification that Polish law does not allow officials to give out “police things” to everyone.¹⁰²

Shortly after Mr Pawel Ondycz met with his father, he was taken to the prosecutor. At 2:00 PM on May 21, 2001, the hearing took place. According to Mr Andrzej Ondycz, this took, in total, approximately 20 minutes; Pawel Ondycz was sentenced to three months in prison for armed robbery. The attorney argued during the hearing that his client’s health and limited responsibility for his actions should be taken into consideration. Although Pawel Ondycz’s attorney appealed the ruling, he reportedly served the full sentence.

X. RECOMMENDATIONS

In light of the above, the *ERRC* recommends that the Government of Poland undertake the following:

1. Promptly bring those responsible for racially motivated crimes against Romani children and youth to justice.
2. Carry out thorough and timely investigations into all alleged instances of police abuse of Romani children and youth, including violence, unlawful searches, malicious investigation of violence against Roma, harassment, and failure to investigate racially motivated crimes and/or protect potential victims of violent attacks.
3. Bring Polish law into conformity with the requirements of Council Directive 2000/43/EC, “implementing the principle of equality between persons, irrespective of racial or ethnic origin” by adopting a comprehensive anti-discrimination law. Ensure that the implementing body mandated by the Directive is strong, fully independent and adequately staffed and funded.
4. Ensure effective remedy for cases of discrimination against Romani children and youth in the field of housing, health care, social protection and other sectoral fields.

⁹⁹ A copy of the medical certificate referred to is on file at the *ERRC*.

¹⁰⁰ *European Roma Rights Center* interview with Mr Andrzej Ondycz, June 21, 2001, Nowy Sacz.

¹⁰¹ *European Roma Rights Center* interview with Mr Andrzej Ondycz, June 21, 2001, Nowy Sacz.

¹⁰² *European Roma Rights Center* interview with Mr Andrzej Ondycz, June 21, 2001, Nowy Sacz.

5. Terminate discriminatory and segregationist practices in the field of housing, and provide Romani families with legally recognised habitable shelter, security of tenure, and adequate basic infrastructure.
6. Implement a comprehensive school desegregation plan, such that all Romani children may fully realise the right to education. Without delay, end the practice of segregating Romani children into so-called “Gypsy classes” or into classes for mentally disabled students. Integrate all Romani students into mainstream classes and, where necessary, design and implement adequately funded and staffed programmes aimed at easing the transition from segregated to integrated schooling.
7. Design pre-school programmes for Romani children to learn the primary language of schooling and to attain a level ensuring an equal start in the first class of primary school.
8. Develop and implement catch-up or adult education programmes aimed at remedying the legacies of substandard education and non-schooling of Roma.
9. Where instances of abuse in the school system are reported – abuse including exclusionary practices, physical and verbal assault, humiliating treatment, and failure by teachers and school administrators to protect Romani children from peer abuse – without delay, punish school authorities responsible, and implement measures aimed at preventing further abuse.
10. Develop curriculum resources for teaching Romani language, culture, and history in schools, and make them available to all schools, so that all children in Poland learn of the valuable contributions Roma have made to Polish society.
11. Provide free legal aid to members of weak groups, including Roma, children, and the indigent.
12. At the highest level, speak out against the problem of anti-Romani sentiment and racially motivated crimes against Roma; at all levels, acknowledge and speak out against racism, racially motivated crime, patterns and practices of discrimination, and segregation. Address the root problem of anti-Romani racism in Poland by developing and implementing anti-racism curriculums for schools and campaigns for the media, so as to address widespread negative attitudes against Roma and racism generally.
13. Conduct comprehensive children’s rights, human rights and anti-racism training for the national and local administration, members of the police force and of the judiciary.

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