

TOLERANCE IMPLEMENTATION MEETING: ADDRESSING THE HATE CRIME DATA DEFICIT

"DATA COLLECTION AS AN EFFECTIVE TOOL FOR IMPROVING POLICY RESPONSES AIMED AT COMBATING HATE CRIME"

Ladies and Gentlemen,

We have heard in the past two days why it is so important to collect data on hate crimes and also how this can be done in practice. I will therefore try not to repeat what previous speakers have said on this subject. However, I would like to underline at the beginning of my presentation that the European Commission against Racism and Intolerance (short ECRI) - the independent human rights monitoring body of the Council of Europe in the field of combating racism and intolerance – is already advocating for many years for the establishment of centralised monitoring systems for racist crimes.

As most of you will know, ECRI's task is to give legal and policy advice to governments on how best to combat racism and intolerance and this kind of information is extremely important for ECRI in order to be able to assess the situation concerning racism and intolerance in a given country. Unlike our two inter-agency partners ODIHR and the EUMC, ECRI's primary task is not to collect data, but to analyse and draw conclusions from the data collected by other national and international institutions. In the framework of its country monitoring work and its General Policy Recommendations, ECRI therefore also regularly underlines the importance of developing and maintaining systems for recording incidents of racism and intolerance.

However, the recording of a racist incident is only a first step, what really counts for a victim of a racist crime is what kind of follow-up it is given within the domestic criminal justice system.

Despite reports of widespread incidents of racially-motivated crime, ECRI has noted in the framework of its country-by-country monitoring work a general lack of implementation of criminal law provisions concerning racist crime. ECRI therefore encourages member States to actively review the implementation of criminal provisions in this area.

Such a review should include both the collection of qualitative and quantitative data.

As regards quantitative data, ECRI regularly recommends to member States that the following data should be recorded:

- the number of complaints brought in
- the details of any investigations carried out
- prosecutions initiated
- and the outcomes of such complaints in terms of any decisions rendered and/or redress or compensation awarded.

As regards qualitative data, ECRI asks member States to investigate in more depth:

- the clarity and adequacy of the legal provisions in place
- the attitudes of the police, prosecutors and courts in receiving and dealing with complaints
- possible procedural impediments for prosecuting racist crime
- the sentencing practices concerning racist crime

but also:

- who are the victims of racist crime and what is their trust in the criminal justice system , for example, through crime or victim surveys

and finally:

- who are the perpetrators of racist crime.

A thorough analysis of this collected quantitative and qualitative data concerning racist crime - or more specifically data concerning the implementation of criminal provisions against racist crime - will show where the weaknesses of member States in responding to racist crime lie. According to ECRI, this might require the adoption of adequate policy responses on several levels, among which I will examine today the following two in more detail:

- 1.) Measures to be taken within the criminal justice system
- 2.) Measures to be directed at victims of racist crime

ad 1.) Possible measures to be taken within the criminal justice system

There are a variety of reasons, why national criminal justice systems have problems with dealing effectively with racist crime. ECRI has identified in the framework of its country-monitoring work a number of legal and policy responses for addressing this problem. They include:

- a. Improving the law
- b. Improving the procedure
- c. Providing training for the police, the judiciary and the prosecution
- d. Creating support structures and cooperation mechanisms within the criminal justice system

ad a.) Improving the law

In most European countries criminal provisions concerning racist crime exist, but they are only to a varying degree appropriate for combating effectively racist hate crime. ECRI has therefore given in its GPR no.7 specific guidance, as to what should be the key elements of national legislation to combat effectively racism and racial discrimination. As regards criminal provisions concerning racist offences ECRI recommends the following:

- They should be formulated as clearly as possible and provide for a clear definition of racist crime
- They should provide a clear legal basis for prosecuting racist crime
- The racist motivation should be considered as an aggravating circumstance when sentencing (it should not be only discretionary for the courts to consider it)
- the penalties provided for by the law should have a deterrent effect

ad b.) Improving the procedure:

ECRI has observed that in some countries the procedural rules for the prosecution of racist crimes are overly strict and regularly frustrate the prosecutions or the securing of convictions. This is sometimes due to very short periods of prescription or to excessively high standards of proof.

Another problem identified by ECRI constitutes the excessive length of criminal procedures in certain countries. Measures to speed up the procedure of cases relating to racism and xenophobia, as recently introduced, for example, in **France** have therefore to be welcome.

Another important procedural matter is linked with the decision-making power of the prosecution authorities concerning the actual prosecution of a particular case. In this context ECRI encourages the authorities to place an obligation on the public prosecutor to publish his/her reasons for not prosecuting a case. ECRI considers that such a measure will dissuade public prosecutors from not pursuing prosecutions for reasons of expediency. In addition, ECRI encourages member States to enable prosecutors to pursue prosecutions of their own volition in the absence of a complaint from a victim.

ad c.) Providing training for the police, the judiciary and the prosecution

In order to promote the effective operation of the criminal law in practice, ECRI advocates the delivery of training to all actors involved in the criminal justice system including the police, prosecuting authorities and the judiciary. Such training should focus on the investigation, prosecution and sentencing of racist crimes and address the ways in which racism and discrimination manifest themselves in practice. The aim of this training should be to ensure that the racist element of offences is taken into account at all stages of the criminal process, and to impress upon the officials concerned the need to actively counter racist offences.

A lot has been said about this during the past two days and I will therefore not elaborate on this, but there is still a lot of work to be done in this field and ECRI therefore also strongly supports ODIHR's law-enforcement training programme.

ad d.) Creating support structures and cooperation mechanisms within the criminal justice system

Specialised support structures within the police as well as the public prosecution can considerably improve the response of law enforcement agencies to racist crime. As regards more specifically the police, ECRI recommends that special units should be charged with countering incidents of racially-motivated offences and the activities of racist groups. Such units should also be tasked with ensuring that offences of racist nature are identified as racist incidents and treated as such during police investigations.

***Example/ Cyprus:** In its recently published report on Cyprus ECRI welcomes that as part of an Action Plan of the police to combat discrimination, an Office for Combating Discrimination has been established at the Police Headquarters and liaison officers specialised in issues of racism and discrimination are to be appointed within every police division.*

Another important measure to improve the follow-up of racist crimes is to increase awareness and partnership between all involved agencies in this field. An example for this exists in the **Netherlands**, where a "Partnership Training Programme" was set up in order to improve cooperation between the police, public prosecution service, anti-discrimination centres and municipal authorities.

Of course, ECRI also regularly underlines the importance of creating channels of dialogue between police and concerned minority groups, what brings me to the second set of measures for improving responses to racist crime, which is directed at the victims of racist crime.

ad 2.) Measures to be directed at victims of racist crime

ECRI considers it particularly important that member States adopt measures aimed at encouraging victims of racist offences to come forward and lodge complaints. Such measures should include disseminating information concerning relevant criminal law provisions and encouraging victims to approach the police with complaints. In this context I would also like to underline the important role that national specialised bodies to combat racism and racial discrimination may play here, in providing information, but also in facilitating the contact between representatives of the criminal justice system and victims of racist crime.

At the same time ECRI recommends that special confidence building measures should be adopted by the public authorities in order to show to minority groups that their complaints will be taken seriously, properly handled and investigated. Such measures might include the appointment of persons with particular responsibility for dealing with complaints of racist crime within the police force or the increased recruitment of members of minority groups into the police service.

However, all this does of course not take place in a societal vacuum and the success of combating racist crime depends also very much on the general climate of tolerance or intolerance in a given country. Here again ECRI has developed a variety of different policy responses, but for today I will leave it here.

I gave you now a very broad overview of possible measures to improve the response to racist hate crime. Some of you might be overwhelmed by the sheer size of the task; however I can reassure you that this undertaking is most probably manageable in most of our countries. However, this certainly only under the condition that comprehensive quantitative and qualitative data concerning racist crime is started to be collected in all our member States. Only then we will be able to assess the real scale of the problem and to focus our limited resources on the issues, which have been identified by us as being the main obstacles to combating successfully racist crime.

Thank you for your attention.