

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## ECRI GENERAL POLICY RECOMMENDATION N° 11

### ON COMBATING RACISM AND RACIAL DISCRIMINATION IN POLICING

ADOPTED ON 29 JUNE 2007

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**The European Commission against Racism and Intolerance (ECRI):**

Having regard to Article 14 of the European Convention on Human Rights, Protocol No12 to this convention and the case-law of the European Court of Human Rights;

Having regard to the International Convention on the Elimination of All Forms of Racial Discrimination;

Recalling ECRI's General Policy Recommendation No 7 on national legislation to combat racism and racial discrimination;

Recalling ECRI's General Policy Recommendation No 8 on combating racism while fighting terrorism;

Recalling Recommendation Rec (2001) 10 of the Committee of Ministers to member States on the European Code of Police Ethics, adopted by the Committee of Ministers of the Council of Europe on 19 September 2001;

Recalling the Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight against Terrorism;

Recalling the standards adopted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

Recalling General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, adopted by the Committee on the Elimination of Racial Discrimination on 17 August 2005;

Recalling the OSCE High Commissioner on National Minorities' Recommendations on Policing in Multi-Ethnic Societies, of February 2006;

Stressing that, in its country reports, ECRI regularly recommends to member States the adoption of effective measures aimed at combating racism and racial discrimination in policing;

Stressing the positive role the police must play in combating racism and racial discrimination and promoting human rights, democracy and the rule of law;

Stressing the need to provide the police with all the necessary human, financial and other means to fully play this role;

Aware that combating crime, including terrorism, constitutes a challenging task for the police to accomplish;

Stressing that in order to fully accomplish their tasks, the police must ensure that the rights and security of all persons are protected and guaranteed;

Recommends to the governments of member States:

**I. As concerns racial profiling**

1. To clearly define and prohibit racial profiling by law;

For the purposes of this Recommendation, racial profiling shall mean:

“The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities”;

2. To carry out research on racial profiling and monitor police activities in order to identify racial profiling practices, including by collecting data broken down by grounds such as national or ethnic origin, language, religion and nationality in respect of relevant police activities;
3. To introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria ;
4. To train the police on the issue of racial profiling and on the use of the reasonable suspicion standard;

**II. As concerns all forms of racial discrimination and racially-motivated misconduct by the police**

5. To ensure that legislation prohibiting direct and indirect racial discrimination cover the activities of the police;
6. To train the police in human rights, including the right to be free of racism and racial discrimination, and in the legal provisions in force against racism and racial discrimination;
7. To take measures to make the police aware of the fact that acts of racial discrimination and racially-motivated misconduct by the police will not be tolerated;
8. To provide for support and advice mechanisms for victims of racial discrimination or racially-motivated misconduct by the police;
9. To ensure effective investigations into alleged cases of racial discrimination or racially-motivated misconduct by the police and ensure as necessary that the perpetrators of these acts are adequately punished;
10. To provide for a body, independent of the police and prosecution authorities, entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police;

**III. As concerns the role of the police in combating racist offences and monitoring racist incidents**

11. To ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account;
12. To establish and operate a system for recording and monitoring racist incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist offences;
13. To encourage victims and witnesses of racist incidents to report such incidents;
14. To these ends, to adopt a broad definition of racist incident;

For the purposes of this Recommendation, a racist incident shall be:

“any incident which is perceived to be racist by the victim or any other person” ;

**IV. As concerns relations between the police and members of minority groups**

15. To place the police under a statutory obligation to promote equality and prevent racial discrimination in carrying out their functions;
16. To train the police in policing a diverse society;
17. To recruit members of under-represented minority groups in the police and ensure that they have equal opportunities for progression in their careers;
18. To establish frameworks for dialogue and co-operation between the police and members of minority groups;
19. To provide to the extent possible those who are in contact with the police and do not understand the official language, with access to professional interpretation services;
20. To ensure that the police communicate with the media and the public at large in a manner that does not perpetuate hostility or prejudice towards members of minority groups.



# EXPLANATORY MEMORANDUM

## Introduction

21. This General Policy Recommendation (hereafter: the Recommendation) focuses on combating racism and racial discrimination in policing. The Recommendation does not, however, aim to cover all aspects relevant to combating racism and racial discrimination in policing with the same level of detail. Combating racism and racial discrimination in policing has been the subject of extensive national and international attention from different angles, and recommendations have been issued accordingly by other international organisations. Therefore, while trying to be as comprehensive as possible, ECRI has decided to make a special focus on those aspects of combating racism and racial discrimination in policing in respect of which it can bring specific added value as an independent human rights monitoring body of the Council of Europe specialised in combating racism and racial discrimination.
22. For the purposes of this Recommendation, the term “police” refers to those exercising (or having by law) the power to use force in order to maintain law and order in society, normally including prevention and detection of crime. This Recommendation applies regardless of how such police are organised; whether centralised or locally oriented, whether structured in a civilian or military manner, whether labelled as services or forces, or whether they are accountable to the state, to international, regional or local authorities or to a wider public. This includes secret security and intelligence services and border control officials. It also includes private companies exercising police powers as defined above.
23. By avoiding racism and racial discrimination, the police responds to two important aspects of its mission. Firstly, it can meet the challenges posed by the need to counter crime, including terrorism, in a way that both enhances human security and respects the rights of all. Secondly, it promotes democracy and the rule of law. The aim of this Recommendation is therefore by no means to highlight bad policing and stigmatise the police, but to help them to promote security and human rights for all through adequate policing.
24. The Recommendation covers racism and racial discrimination in the context of combating all crime, including terrorism. In its country-by-country monitoring reports, ECRI regularly deals with problems linked to racism and racial discrimination in policing in the context of fighting crime and makes recommendations to member States as how to combat such phenomena. Recently, ECRI has expressed concern in its monitoring reports at information according to which cases of racism and racial discrimination in policing, including racial profiling, have intensified and taken on a new dimension, particularly as a result of the fight against terrorist crime.
25. ECRI is aware that the police often works in a difficult context and that the everyday reality of combating crime, including terrorism, pose real challenges that need to be met. However, ECRI is convinced that racism and racial discrimination, including racial profiling, cannot constitute a possible response to these challenges. Firstly, because they violate human rights. Secondly, because they reinforce prejudice and stereotypes about certain minority groups and legitimise racism and racial discrimination against them among the general population. Thirdly, because racial profiling is not effective and is conducive to less, not more human security. ECRI believes that it is trust in the police by all

segments of society that enhances overall security. It is not possible for the police to work effectively, including against specific security challenges, without the co-operation of all components of society, majority and minority.

26. It is paramount that effective safeguards against racist acts committed by the police are provided for. There can be no confidence in the police, if its members are allowed to abuse with impunity the powers that this institution needs to fulfil its mission.

## **I. As concerns racial profiling**

*Paragraph 1 of the Recommendation:*

*“To clearly define and prohibit racial profiling by law;*

*For the purposes of this Recommendation, racial profiling shall mean:*

*‘The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities’”*

27. The Recommendation provides a definition of racial profiling. Since racial profiling constitutes a specific form of racial discrimination, the definition of racial profiling adopted by ECRI draws inspiration from the definition of racial discrimination contained in its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination (hereafter: GPR 7) and on the definition of discrimination used by the European Court of Human Rights in its case-law.
28. Racial profiling is the use by the police of certain grounds in control, surveillance or investigation activities, without objective and reasonable justification. The use of these grounds has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.
29. ECRI stresses that even when, in abstract terms, a legitimate aim exists (for instance the prevention of disorder or crime), the use of these grounds in control, surveillance or investigation activities can hardly be justified outside the case where the police act on the basis of a specific suspect description within the relevant time-limits, i.e. when it pursues a specific lead concerning the identifying characteristics of a person involved in a specific criminal activity. In order for the police to avoid racial profiling, control, surveillance or investigation activities should be strictly based on individual behaviour and/or accumulated intelligence.
30. With respect to differential treatment on the ground of ethnic origin, the European Court of Human Rights indicates that “[i]n any event, [it] considers that no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures” (ECHR, 13 December 2005, *Timishev v. Russia*, § 58). As concerns differential treatment on the ground of nationality, the European Court of Human Rights includes this ground among those for which “very weighty reasons” are required in order for differential treatment to be justified (ECHR, 16 September 1996, *Gaygusuz v. Austria*, § 42). More generally, as it has already highlighted in GPR 7, ECRI stresses that the notion of objective and



reasonable justification should be interpreted as restrictively as possible with respect to differential treatment based on any of the enumerated grounds.

31. Bearing these principles in mind, different considerations should be taken into account in order to assess whether the proportionality test between the means employed and the aims sought to be realised is satisfied in the context of racial profiling. These considerations are:
32. i) effectiveness criterion: the ability of the concrete measure to achieve the ends for which it was conceived. The effectiveness criterion includes considering: the extent to which the measure in question has led to identification of criminals; the extent to which the measure in question affects the ability of the police to work with minority groups to identify criminals; the extent to which the measure in question may divert the police away from identifying real criminal activities.
33. ii) necessity criterion: the existence or otherwise of other, less invasive, measures in order to achieve the same aim.
34. iii) harm criterion: the extent to which the concrete measure affects the rights of the individual (right to respect for private and family life, right to liberty and security, right to be free from discrimination, etc.). Beyond considerations relating to the individual rights affected, the harm criterion should be understood in more general terms, as including considerations on the extent to which the measure in question institutionalises prejudice and legitimises discriminatory behaviour among the general public towards members of certain groups. Research has shown that racial profiling has considerably negative effects. Racial profiling generates a feeling of humiliation and injustice among certain groups of persons and results in their stigmatisation and alienation as well as in the deterioration of relations between these groups and the police, due to loss of trust in the latter. In this context, it is important to examine, as part of the assessment of the harm criterion, the behaviour of the police when conducting the relevant control, surveillance or investigation activity. For instance, in the case of stops, courtesy and explanations provided on the grounds for the stop have a central role in the individual's experience of the stop. It is also important to assess the extent to which certain groups are stigmatised as a result of decisions to concentrate police efforts on specific crimes or in certain geographical areas.
35. The definition of racial profiling used by ECRI contains a list of grounds, which is a non-exhaustive list. In addition to the grounds explicitly mentioned, other grounds on which racial profiling can intervene include, for instance, a person's country of origin. An illustration of this are certain checks carried out on passengers on board flights originating from specific countries. As concerns the ground of "race", ECRI stresses that although it rejects theories based on the existence of different "races", it has nevertheless decided to use this term in the Recommendation to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the scope of the protection that this Recommendation intends to provide. The term "grounds" used in the definition of racial profiling must include grounds which are actual or presumed. For instance, if a person is questioned on the presumption that he or she is a Muslim, when in reality this is not the case, this would still constitute racial profiling on grounds of religion.

36. The definition of racial profiling refers to control, surveillance or investigation activities. Acts that fall in this definition include: stops and searches; identity checks; vehicle inspections; personal searches; searches of homes and other premises; mass identity checks and searches; raids; surveillance (including wire-tapping); data mining/data trawling. While this list is non-exhaustive, police activities that are carried out for purposes other than control, surveillance and investigation (such as the treatment of persons held in custody) do not fall in ECRI's definition of racial profiling. However, these activities may well be in breach of the prohibition of racial discrimination (on this point, see Section II).
37. Racial profiling is mainly the result of stereotypes existing among the police, whereby certain groups of persons designated by grounds such as race, colour, language, religion, nationality or national or ethnic origin are presumed to be more prone than others to commit offences or certain kinds of offences. However, the prohibition of racial profiling must also cover those situations where the link between stereotypes and racial profiling is more difficult to establish.
38. In the same way as racial discrimination, racial profiling can take the form of indirect racial discrimination (see the definition of indirect racial discrimination below in paragraph 49-b). In other words, the police may use (without objective and reasonable justification) criteria which are apparently neutral, but impact disproportionately on a group of persons designated by grounds such as race, colour, language, religion, nationality or national or ethnic origin. For instance, a profile that tells the police to stop all women who wear a headscarf could constitute racial profiling inasmuch as it would impact disproportionately on Muslim women and would not have an objective and reasonable justification. The prohibition of racial profiling also covers these indirect forms of racial profiling. Furthermore, in the same way as racial discrimination, racial profiling can take the form of discrimination by association. This occurs when a person is discriminated against on the basis of his or her association or contacts with persons designated by one of the grounds mentioned above.
39. The Recommendation refers to the need to "prohibit racial profiling by law". As concerns sanctions for violations of this prohibition, since racial profiling constitutes a form of racial discrimination, the sanctions provided for in GPR 7 for racial discrimination should apply. In addition to legal sanctions and remedies designed essentially for individual officer behaviour, more flexible remedial mechanisms should be available to address the type of racial profiling that results from institutional policies and practices. For instance, upon receipt of credible reports of racial profiling by a police service, appropriate authorities could be entitled to conduct a policy audit to examine this question by means of a review of established policy, training, operational protocols or other factors existing within that service. Especially where existing administrative mechanisms do not provide a vehicle for such policy audits, the latter could be carried out by an independent authority. This might be the independent body entrusted with the investigation of alleged acts of racial discrimination and racially-motivated misconduct by the police (the establishment of which is recommended in paragraph 10) or the specialised body which ECRI recommends be established in its General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

*Paragraph 2 of the Recommendation:*

*“To carry out research on racial profiling and monitor police activities in order to identify racial profiling practices, including by collecting data broken down by grounds such as national or ethnic origin, language, religion and nationality in respect of relevant police activities”*

40. Very little research and monitoring are carried out within the member States of the Council of Europe concerning racial profiling. There are serious gaps in knowledge both as concerns research on methods aimed at identifying and measuring racial profiling and as regards studies that would cover the different aspects mentioned above with respect to the definition of racial profiling, namely the effectiveness, necessity of and harm caused by racial profiling. ECRI considers that these gaps in knowledge effectively allow racial profiling practices to continue unhindered and to intensify in specific security contexts.
41. As concerns monitoring of police activities in order to identify racial profiling practices, one of the main reasons for the gap in knowledge about racial profiling is the lack, in the vast majority of the member States of the Council of Europe, of data broken down by grounds such as national or ethnic origin, language, religion and nationality. In its country monitoring reports, ECRI consistently recommends that member States collect such data, in order to monitor the situation of minority groups and identify possible patterns of direct or indirect discrimination they may face in different areas of life. Policing and, more generally, the criminal justice system are crucial areas in respect of which ECRI has called for this type of data to be collected in order to foster accountability and provide a common foundation of knowledge for policy-making. ECRI also consistently stresses that such data should be collected with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group and in close co-operation with all the relevant actors, including civil society organisations.
42. For data broken down by grounds such as national or ethnic origin, language, religion and nationality to be used to identify and measure racial profiling, such data should be collected in respect of relevant police activities, including identity checks, vehicle inspections, personal searches, home/premises searches and raids. Data should also be collected on the final results of these activities (in terms of prosecutions and convictions) so as to be able to assess whether the ratio between checks carried out and actual convictions is any different for members of minority groups compared to the rest of the population. In order to be useful, research and monitoring of racial profiling must also respond to high standards of scientific research, which are to be reflected in the methodology used. Good practices have already been developed in this respect to document and measure racial profiling in Europe and abroad. For instance, when monitoring possible racial profiling in stops and searches carried out in a particular area at a particular time, care should be taken to measure the composition of the population in that area and at that time in order to determine whether the police are disproportionately stopping members of minority groups in that particular context.
43. ECRI stresses that by collecting this type of data, the police demonstrate good will and a readiness to listen to the complaints of minority groups. If no racial profiling is established, this can help to re-establish or consolidate confidence and decrease the risk that police may be subject to aggressive behaviour. ECRI

also stresses that the perception that the police may be resorting to racial profiling can be just as harmful as racial profiling itself.

*Paragraph 3 of the Recommendation:*

*“To introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria”*

44. The European Code of Police Ethics provides in its paragraph 47 that “[p]olice investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime”. As explained in its Explanatory Memorandum to the Code, this means that there needs to be a suspicion of an offence or crime that is justified by some objective criteria before the police can initiate an investigation. ECRI believes that the introduction of a reasonable suspicion standard in the exercise of police investigation powers and in the exercise of police powers relating to control and surveillance activities is a particularly important tool in combating racial profiling. It therefore recommends that such a standard be introduced in the legal or regulatory frameworks which, in the different member States, govern the exercise of these police powers.

*Paragraph 4 of the Recommendation:*

*“To train the police on the issue of racial profiling and on the use of the reasonable suspicion standard”*

45. This training must cover the unlawfulness of racial profiling as well as its ineffectiveness and harmful nature as described above.
46. Training on the use of the reasonable suspicion standard should include practical examples of operational situations indicating the behaviour expected of police officers in the exercise of their powers. It should also include practical principles to be used by police officers in concrete situations in order to assess whether they are acting in compliance with the reasonable suspicion standard. One such principle could be, for instance, that the concrete grounds on which the officer builds his or her suspicion should be enough to give rise to that suspicion in a reasonable third person. Another principle could be that there can be no reasonable suspicion when the officer knows in advance that the exercise of his or her power has little or no likelihood of resulting in an offence being detected. At the same time, when the officer has a reasonable suspicion that an offence has been or may be committed in a clearly identified geographical area, the officer may exercise his or her powers with respect to all persons within that area, provided that this is done without discrimination.
47. In order to be effective, such specific training must be accompanied by more general training to raise the awareness among the police of human rights issues and of the need to combat racism and racial discrimination (on this point, see the other parts of the Recommendation covering training and awareness raising).

## **II. As concerns all forms of racial discrimination and racially-motivated misconduct by the police**

48. The recommendations made under this section apply to all forms of racial discrimination (including racial profiling) and racially-motivated police misconduct.

### *Paragraph 5 of the Recommendation:*

*“To ensure that legislation prohibiting direct and indirect racial discrimination cover the activities of the police”*

49. With this recommendation ECRI reiterates its call on member States, already made in its GPR 7, to bring the activities of the police under the scope of antidiscrimination legislation. In GPR 7, ECRI defines direct and indirect racial discrimination as follows:
- a) “racial discrimination” shall mean any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification. Differential treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.
  - b) “indirect racial discrimination” shall mean cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification. This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.
50. In addition to providing these definitions, in its GPR 7 ECRI enumerates the key elements that effective antidiscrimination legislation should contain, including as concerns the burden of proof in discrimination cases, the sanctions that should be available for such cases and the specific acts to be explicitly considered as acts of discrimination. All these key elements should therefore also apply to the activities of the police. ECRI reiterates here that these key components might also be included in broader legislation encompassing the fight against racism and racial discrimination in policing. For example, when adopting legal measures against discrimination in policing, member States might prohibit, alongside racial discrimination, other forms of discrimination such as those based on gender, sexual orientation, disability, political or other opinions, social origin, property, birth or other status.

### *Paragraph 8 of the Recommendation:*

*“To provide for support and advice mechanisms for victims of racial discrimination or racially-motivated misconduct by the police”*

51. Victims of racial discrimination and racially-motivated misconduct by the police are in a particularly vulnerable situation, since the police are in principle the natural interlocutors for victims of these acts when they are committed by others. It is therefore necessary to ensure that legal advice and adequate psychological support are available, be it within the police or outside of it, so as

to encourage victims to come forward to have their rights protected. Their access to legal aid and medical assistance should also be guaranteed. Furthermore, victims should be protected against retaliation by police officers, including abusive counter-charges.

52. Support mechanisms for victims of racial discrimination and racist acts should also be available when such acts are committed by persons other than police officers. In these cases, the police have an even more active role to play in encouraging and advising victims by referring them to the structure that is best suited to their specific situation.
53. An example of support mechanism is the establishment of a free telephone helpline, which can provide victims with legal advice and/or psychological support in different languages 24 hours a day. Persons who complain of racial discrimination or racially-motivated misconduct by the police should be informed about social services and civil society organisations that provide support and advice to victims. For instance, information leaflets concerning support for victims of racial discrimination or racially-motivated misconduct by the police could be made available.

*Paragraph 9 of the Recommendation:*

*“To ensure effective investigations into alleged cases of racial discrimination or racially-motivated misconduct by the police and ensure as necessary that the perpetrators of these acts are adequately punished”*

54. By “effective investigation” ECRI means an investigation that meets the criteria established by both the European Court of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). To be effective, an investigation must in particular be adequate, comprehensive, thorough, prompt, expedient and independent. See the case-law of the European Court of Human Rights (for instance, ECHR, 26 January 2006, *Mikheyev v. Russia*) and the CPT standards (*The CPT Standards*, October 2006, from p. 81 onwards, Extract from the 14th General Report [CPT/Inf (2004) 28]). Measures must be taken to ensure that victims are kept informed about the investigations and their results.
55. As concerns investigations into racially-motivated police misconduct, in the case of *Nachova v. Bulgaria* of 6 July 2005 and other subsequent cases, the European Court of Human Rights has underlined the obligation for the national authorities to carry out an investigation on the possible racist motives behind the conduct of law enforcement officials when there are indications of the existence of such motives. Failing a satisfactory investigation on this point, the State is responsible for violating article 14 of the Convention (prohibition of discrimination) in combination with another article (for instance article 2– right to life, or article 3 – prohibition of torture or inhuman or degrading treatment or punishment) from the point of view of procedure.
56. As concerns the need to ensure that police officers who are responsible for racial discrimination and racially-motivated misconduct are adequately punished, ECRI recalls the key elements of effective criminal legislation against racism and racial discrimination it identified in its GPR 7. In particular, it recalls that the racist motivation of an offence should be provided by law as a specific aggravating circumstance in sentencing. Victims of racial discrimination and racially-motivated misconduct by the police should also benefit from adequate compensation for any material and moral damages they have suffered.

57. The police must provide for an internal quality-check mechanism of police work, covering questions related to cases of racial discrimination and racially-motivated misconduct. Police leaders must give a high priority to these questions and communicate such priority to their subordinates.

*Paragraph 10 of the Recommendation:*

*“To provide for a body, independent of the police and prosecution authorities, entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police”*

58. The body entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police should exist alongside other structures competent for receiving complaints against police misconduct, such as the internal disciplinary mechanisms (police inspectorate, Department of the Ministry of Interior, etc.) and the prosecutor. Experience shows that victims of police abuses do not generally have confidence in the complaints mechanisms internal to the police. They are often also reluctant to bring cases before institutions which cooperate closely and on a daily basis with the police, such as the prosecution authorities. It is therefore necessary to create a system whereby a victim can bring a complaint in full confidence to an independent body whose main task is to control the activities of the police. See also on this point the Section on Police Accountability and Transparency of the *Guidebook on Democratic Policing*, by the Senior Police Adviser to the OSCE Secretary General, December 2006, from p. 33 onwards.
59. This body entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police should be given all the necessary powers to exercise its task effectively. Therefore, it should have powers such as requesting the production of documents and other elements for inspection and examination; seizure of documents and other elements for the purpose of making copies or extracts; and questioning persons. When the facts brought to its knowledge are of a criminal nature, this body must be required to bring the case before the prosecuting authorities.
60. The body entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police may take different forms. It might be a national institution for the protection and promotion of human rights, a specialised police Ombudsman, a civilian oversight commission on police activities, or the specialised body which ECRI recommends be established in its General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.
61. In addition to investigation powers, this body could be given the following powers for cases which do not entail criminal responsibility: friendly settlement of disputes; monitoring the activities of the police and making recommendations for improving legislation, regulations and practices in order to combat racism and racial discrimination in policing; and the establishment of codes of conduct. The body in question should be required to actively co-operate with the organisations working in the field of combating racism and racial discrimination. It is essential that such a body be easily accessible to those whose rights it is intended to protect. Where appropriate, local offices should be set up in order to increase this body’s accessibility.

### III. As concerns the role of the police in combating racist offences and monitoring racist incidents

62. The Recommendation makes a distinction between racist offences and racist incidents. Unlike racist offences (which are criminal law concepts), racist incidents consist of any incident which is perceived to be racist by the victim or any other person. Therefore, all racist offences can first be qualified as racist incidents. However, not all racist incidents will eventually constitute racist offences. It is for the investigation, and ultimately the court, to determine whether a criminal offence has been committed and whether, for instance, the motivation of the offence was racist.
63. By racist offences, ECRI means ordinary offences (such as murder, assault and battery, arson or insult) committed with a racist motivation (racially-motivated offences), and other offences in which the racist element is inherent to the offence (such as incitement to racial hatred or participation in a racist organisation).
64. As concerns the grounds covered by the notions of *racist* incident and *racist* offence, in its GPR 7 ECRI has already clarified that racism covers conduct based on grounds such as race, colour, language, religion, nationality or national or ethnic origin.

#### *Paragraph 11 of the Recommendation:*

*“To ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account”*

65. In the case of *Šečić v. Croatia* of 31 May 2007, concerning police investigations into a racist attack against a person of Roma origin by individuals suspected to belong to a skinhead group, the European Court of Human Rights has underlined that “[t]reating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights”. The Court therefore considered it unacceptable that a violent act which was most probably racially-motivated had not been investigated seriously and expeditiously with a view to identifying and prosecuting the perpetrators (See *Šečić v. Croatia*, § 67-69).
66. One practical measure that can be taken to ensure that the police investigate all racist offences thoroughly, and in particular that they do not overlook the racist motivation of ordinary offences in their investigations, is the adoption of the broad definition of racist incident provided in this Recommendation (paragraph 14). As soon as a racist incident is reported in accordance with this definition, the police must be required to pursue that line of investigation thoroughly. To this end, specific guidelines should be provided to police officers on the steps to be taken when a racist incident is reported, including as concerns the following areas: sensitivity towards the victim; action to be taken at the scene to secure evidence; location and questioning of witnesses; seeking the suspect; exploring possible links with organised racist, including neo-Nazi and skinhead, groups; proceeding with a detailed victim statement.
67. Other measures that can be taken in order to ensure that the police thoroughly investigate racist (including racially-motivated) offences comprise the establishment of units within each police division which specialise in dealing with such offences and the issuing of ministerial circular letters and other



documents to raise the awareness among the police of the need to vigorously counter racist (including racially-motivated) offences.

*Paragraph 12 of the Recommendation:*

*“To establish and operate a system for recording and monitoring racist incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist offences”*

68. In order to gain an overview of the situation as concerns the occurrence of manifestations of racism in society that is as accurate as possible and monitor the response of the criminal justice authorities to such manifestations, it is necessary to develop a reliable system for the recording and monitoring of racist incidents. The adoption of the broad definition of racist incident provided in this Recommendation (paragraph 14) is a key element of such a system. The definition aims to enable uniform monitoring of these incidents by ensuring that all police units and all agencies with a role in receiving reports of such incidents use the same concepts.
69. Furthermore, the police (and all those receiving reports of racist incidents) should gather detailed information on each report. This could be done for instance by filling a racist incident report form, which should contain information on different elements, including as concerns the victim, the suspect or offender, the type of incident, its location and the grounds involved. An example of an incident report, relating to hate crimes generally, is contained in *Combating Hate Crimes in the OSCE Region*, OSCE/ODIHR, 2005, Annex D. See also on this question *Policing Racist Crime and Violence, A Comparative Analysis*, EUMC, September 2005.
70. The collection by the police of detailed and accurate information on racist incidents at this stage is a precondition to effectively monitoring how the criminal justice system as a whole deals with racist incidents and racist offences. However, in order to be able to gain such an overall picture, it is also necessary for the prosecuting authorities and the courts to establish or refine their monitoring systems. These systems should include readily available information on investigations carried out, charges brought and sentences handed down in these cases.
71. The recording of racist incidents also helps the police to improve their investigations of racist offences (as recommended in paragraph 11), in that it provides them with useful background information that can clarify the context within which subsequent offences take place.

*Paragraph 13 of the Recommendation:*

*“To encourage victims and witnesses of racist incidents to report such incidents”*

72. There are different ways in which victims and witnesses of racist incidents may be encouraged to report such incidents. In a general manner, all measures aimed at improving the confidence of minority groups in the police, such as those enumerated in Part II and Part IV of this Recommendation have a strong potential for encouraging reporting of racist incidents. From a more specific perspective, examples of measures that would encourage reporting of racist incidents include the establishment of systems whereby victims and witnesses can report racist incidents to different local agencies (apart from the police, these agencies could include local authorities and civil society organisations) acting in a co-ordinated way. All agencies could for instance be trained on the

use of the same definition of racist incident and on what to do when victims or witnesses approach them. Non-police agencies that receive complaints therefore act as intermediaries and may feed, as necessary, the information to the police. This role of intermediary may be especially relevant for persons in particularly vulnerable positions, such as persons without legal status, who may be reluctant to report racist incidents to the police. Another specific measure is specialised training of police in receiving complaints of racism and racial discrimination.

73. Victims and witnesses of racist incidents should be protected against victimisation, i.e. any adverse treatment or consequences as a reaction to reporting an incident or filing a complaint.

*Paragraph 14 of the Recommendation:*

*“To these ends, to adopt a broad definition of racist incident;*

*For the purposes of this Recommendation, a racist incident shall be:*

*‘any incident which is perceived to be racist by the victim or any other person’”*

74. The Recommendation provides that a racist incident be defined as an incident which is perceived to be racist by the victim or any other person. The adoption of such a broad definition of a racist incident has the advantage of sending the message to the victims that their voice will be heard. This definition is drawn from the 1999 Stephen Lawrence Inquiry Report by Sir William Macpherson of Cluny (Cm 4262, Chapter 47, paragraph 12).
75. As mentioned above, the purpose of adopting a definition of a racist incident is two-fold: firstly, to improve the recording and monitoring of racist incidents and, secondly, to ensure that the police investigate all racist offences thoroughly and do not overlook the racist motivation of ordinary offences.

#### **IV. As concerns relations between the police and members of minority groups**

76. In Parts I, II and III of this Recommendation, ECRI has essentially addressed circumstances in which members of minority groups – i.e. for the purposes of this Recommendation, groups designated by characteristics such as race, colour, language, religion, nationality or national or ethnic origin - are victims of racial discrimination, including racial profiling, and racially-motivated conduct, be it at the hands of the police or by private individuals. However, it is also necessary to ensure that the police behave in a professional and impartial manner when dealing with offences that are not racially-motivated and still involve members of minority groups as victims, perpetrators, witnesses, etc. ECRI's country monitoring reports indicate that prejudice on the basis of race, colour, language, religion, nationality or national or ethnic origin also affects the way in which the police deal with members of minority groups in the context of these offences. For instance, members of minority groups are more easily believed to be the perpetrators of specific offences. Conversely, the police may be less likely to trust members of minority groups who are witnesses or victims of ordinary crime. Difficulties in this area also result from lack of competence among police officers to work in a diverse society. Although of a more general scope, the recommendations made by ECRI in Part IV aim to address these issues.

*Paragraph 15 of the Recommendation:*

*“To place the police under a statutory obligation to promote equality and prevent racial discrimination in carrying out their functions”*

77. In its GPR 7, ECRI had already recommended that public authorities be placed under a statutory obligation to promote equality and prevent racial discrimination in carrying out their functions. With this recommendation, ECRI stresses the importance for the police in particular to be placed under such an obligation. In order to comply with this obligation, the police could be required to draw-up and implement specific programmes aimed at promoting equality and preventing discrimination. These programmes could include a wide range of activities, from training and awareness raising to monitoring and setting equality targets. An example of initiatives that could be included in these programmes is the drawing up of internal codes of conduct against racism and racial discrimination. More generally, police programmes aimed at promoting equality and preventing discrimination should include initiatives and commitments in all areas addressed in this Section (diversity, representation of minority groups in the police, and relations with minority groups and the media). As recommended by ECRI in its GPR 7, police compliance with the statutory obligation to promote equality and prevent racial discrimination could be monitored and enforced through an independent specialised body to combat racism and racial discrimination at national level.

*Paragraph 16 of the Recommendation:*

*“To train the police in policing a diverse society”*

78. Training in policing a diverse society includes specific training for police officers who are in contact with members of minority groups, both citizens and non-citizens. It may also include training aimed at teaching majority police officers a language spoken by a minority group. It may include as well training on cultural and religious pluralism and activities aimed at promoting interaction and respect among colleagues of different backgrounds. The training mentioned above should be as practical as possible, for instance through enacting situations and interaction with members of minority groups.

*Paragraph 17 of the Recommendation:*

*“To recruit members of under-represented minority groups in the police and ensure that they have equal opportunities for progression in their careers”*

79. Ensuring that the composition of the police reflects the diversity of the population is important for promoting a society whose members feel that they enjoy equal opportunities irrespective of their ethnic, national, religious, linguistic or other background. It is also important in order to equip the police with new competences and skills, including language skills, and to increase police effectiveness by enhancing communication with and trust by minority groups.
80. Different types of measures can be taken in order to recruit members of minority groups in the police. These include positive measures such as: (i) to advertise and carry out other promotion work aimed at encouraging applications for jobs within the police from members of minority groups; (ii) to provide members of minority groups who do not possess the necessary skills to pass police exams with such skills, through preparatory courses; (iii) to identify and remove practices that directly or indirectly discriminate against members of

minority groups (e.g. non-discrimination training of those responsible for recruitment, review of selection criteria, etc.); (iv) to set targets for recruitment of members of minority groups and monitor attainment of these targets. Measures that facilitate the recruitment of members of minority groups into the police should not consist of lowering professional standards.

81. Different types of measures can be taken in order to ensure that members of minority groups have equal opportunities for progression in their careers within the police. These include: (i) to prohibit racial harassment among the police (ii) to adopt and implement no-racism internal policies; (iii) to establish and implement effective internal complaints mechanisms; (iv) to take legal measures against officers who racially offend, insult or harass colleagues; (v) to monitor promotions of members of minority groups; (vi) to provide mentoring schemes for members of minority groups with willingness and potential to advance.

*Paragraph 18 of the Recommendation:*

*“To establish frameworks for dialogue and co-operation between the police and members of minority groups”*

82. The establishment of frameworks for dialogue and co-operation between the police and members of minority groups is a crucial element to successfully combating racism and racial discrimination in policing. It is also a way to ensure the effectiveness of police work. It is not possible for the police to carry out their tasks effectively without the co-operation of the members of society, including minority groups. This requires the establishment of trust. The establishment of a dialogue benefits the police and the members of the public, and this is bound to impact favourably on society as a whole. To be effective, the establishment of frameworks for dialogue and co-operation should go along with measures to ensure monitoring and enforcement of the duty of dialogue and co-operation.
83. Dialogue between the police and members of minority groups is a means to avoid racial profiling, but also to avoid that members of minority groups feel that they are victims of racial profiling when this is not the case. On this point, see the considerations above concerning racial profiling.
84. The police should not only co-operate with minority groups and civil society in general, but also with public authorities. It should also closely co-operate with the specialised body which ECRI recommends be established in its General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. This body can play the role of an intermediary or mediator, but also co-operate in the establishment of the programmes mentioned above as part of the obligation for the police to promote equality and prevent discrimination.
85. Means to establish a dialogue and co-operation between the police and members of minority groups include the holding of regular consultation meetings with representatives of minority groups and the creation of advisory committees composed of representatives of minority groups. It is also possible to provide for neighbourhood policing and contact points or contact persons (liaison officers) at police stations, specifically responsible for liaising with minority groups. The Explanatory Note to the recommendations of the OSCE High Commissioner on National Minorities on Policing in Multi-Ethnic Societies provides many detailed examples of mechanisms which can foster

communication and co-operation between the police and the members of a multi-ethnic society.

86. A way of fostering dialogue and co-operation is the appointment of mediators. Provided that they possess the necessary competencies, including language skills, and that they enjoy trust from both the minority groups concerned and the police, mediators can play an important role as intermediaries, thereby avoiding conflict between the police and the minority group concerned.

*Paragraph 19 of the Recommendation:*

*“To provide to the extent possible those who are in contact with the police and do not understand the official language with access to professional interpretation services”*

87. According to the European Convention on Human Rights, everyone who is arrested and/or charged with a criminal offence has the right to be informed in a language which he/she understands of the reasons for his/her arrest and/or of the nature and cause of the accusation against him/her. As concerns persons who are in contact with the police but are not suspects or charged with a criminal offence, such as victims and witnesses, efforts should be made to ensure that interpretation services are available to them, for instance by telephone in cases where it is impossible to find an interpreter on the spot. As a complementary measure, the police could provide for the presence of officers with command of one or more languages in addition to the official language, so as to facilitate communication among persons who do not speak the official language. In those countries which have ratified the Framework Convention for the Protection of National Minorities, the requirements posed by this convention as concerns the language of communication between the public authorities and the minority groups concerned must also be taken into account.

*Paragraph 20 of the Recommendation:*

*“To ensure that the police communicate with the media and the public at large in a manner that does not perpetuate hostility or prejudice towards members of minority groups”*

88. The police should not reveal to the media or to the public information on the race, colour, language, religion, nationality or national or ethnic origin of the alleged perpetrator of an offence. The police should only be allowed to disclose this type of information when such disclosure is strictly necessary and serves a legitimate purpose, such as in case of a wanted notice.
89. Especially when making public statistical information, the police should be careful not to contribute to spreading and perpetuating myths linking crime and ethnic origin or linking the increase in immigration with an increase in crime. The police should ensure that they release objective information, in a way that is respectful of a diverse society and conducive to promoting equality.



## GLOSSARY

### *Police:*

Those exercising (or having by law) the power to use force in order to maintain law and order in society, normally including prevention and detection of crime. This includes secret security and intelligence services and border control officials. It also includes private companies exercising police powers as defined above.

### *Racial profiling:*

The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities.

### *Reasonable suspicion:*

A suspicion of an offence that is justified by some objective criteria before the police can initiate an investigation or carry out control, surveillance or investigation activities.

### *Racist incident:*

Any incident which is perceived to be racist by the victim or any other person.

### *Racist offence:*

An ordinary offence (such as murder, assault and battery, arson or insult) committed with a racist motivation (racially-motivated offence), and other offences in which the racist element is inherent to the offence (such as incitement to racial hatred or participation in a racist organisation).

### *Direct racial discrimination:*

Any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification. Differential treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

### *Indirect racial discrimination:*

Cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification. This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

### **THE COUNCIL OF EUROPE**

*The Council of Europe is a political organisation which was founded on 5 May 1949 by ten European countries in order to promote greater unity between its members. It now numbers 47 European States.<sup>1</sup>*

*The main aims of the Organisation are to promote democracy, human rights and the rule of law, and to develop common responses to political, social, cultural and legal challenges in its member States.*

*The Council of Europe has its permanent headquarters in Strasbourg (France). By Statute, it has two constituent organs: the Committee of Ministers and the Parliamentary Assembly. The Congress of Local and Regional Authorities of Europe represents the entities of local and regional self-government within the member States.*

*The European Court of Human Rights is the judicial body competent to adjudicate complaints brought against a State by individuals, associations or other contracting States on grounds of violation of the European Convention on Human Rights.*

### **EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE**

*The European Commission against Racism and Intolerance (ECRI) is a monitoring body established by the first Summit of Heads of State and Government of the member States of the Council of Europe. The decision to establish ECRI is contained in the Vienna Declaration adopted by the first Summit on 9 October 1993. The European Conference against Racism, held in Strasbourg in October 2000, called for the strengthening of ECRI's action. On 13 June 2002, the Committee of Ministers adopted a new Statute for ECRI, consolidating its role as an independent human rights monitoring body on issues related to racism and racial discrimination.*

*The members of ECRI serve in their individual capacity and are independent. The task of ECRI is to combat racism, xenophobia, antisemitism and intolerance at the level of greater Europe and from the perspective of the protection of human rights. ECRI's action covers all necessary measures to combat violence, discrimination and prejudice faced by persons or groups of persons, notably on grounds of race, colour, language, religion, nationality or national or ethnic origin.*

*ECRI's statutory activities are: country-by-country monitoring; elaboration of General Policy Recommendations; relations with civil society.*

*For further information on ECRI and its activities, please contact:*

*Secretariat of the European Commission against  
Racism and Intolerance  
Council of Europe  
F-67075 Strasbourg cedex  
Tel: +33 (0)3 88 41 29 64 - Fax: +33 (0)3 88 41 39 87  
E-mail: [combat.racism@coe.int](mailto:combat.racism@coe.int)  
Website: [www.coe.int/ecri](http://www.coe.int/ecri)*

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<sup>1</sup> Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the Former Yugoslav Republic of Macedonia", Turkey, Ukraine, United Kingdom.





