

COMPILATION OF ECRI'S GENERAL POLICY RECOMMENDATIONS

Strasbourg, March 2014

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Secretariat of ECRI
Directorate General of Democracy
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: ecri@coe.int

Visit our web site: www.coe.int/ecri

COMPILATION OF ECRI'S GENERAL POLICY RECOMMENDATIONS

Strasbourg, March 2014

Introduction

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe in 1993. It is an independent human rights monitoring body specialised in questions relating to combating racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

One of the pillars of ECRI's statutory activities is the preparation of General Policy Recommendations, which are addressed to all member States and provide guidelines which policy makers are invited to use when drawing up national strategies and policies in various areas.

ECRI has so far adopted the following twelve General Policy Recommendations, which are presented in this publication.

General Policy Recommendation No.1 contains a number of guidelines for national measures concerned with legal and policy aspects of the fight against racism and intolerance.

General Policy Recommendation No.2 concerns specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. In this Recommendation, ECRI recommends that the governments of member States set up or reinforce national specialised bodies to combat racism, xenophobia, antisemitism and intolerance, owing to the important role such bodies can play in protecting individuals and groups from racism and racial discrimination. The appendix to the document sets out basic principles concerning what the statute, form, functions and responsibilities of such bodies should be, to serve as guidelines and a source of inspiration to member States.

General Policy Recommendation No.3 on combating racism and intolerance against Roma/Gypsies takes as its starting point the fact that Roma/Gypsies suffer throughout Europe from persisting prejudices, are victims of a racism which is deep-rooted in society, are the target of sometimes violent demonstrations of racism and intolerance and that their fundamental rights are regularly violated or threatened. This text aims to encourage the adoption of a series of measures to combat manifestations of racism and intolerance and discriminatory practices against Roma/Gypsies.

ECRI's General Policy Recommendation No.4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims notes that the results of such surveys may be used in a variety of ways to highlight problems and improve the situation. The Recommendation provides guidelines for carrying out such surveys, particularly their practical organisation, design and follow-up.

General Policy Recommendation No.5 deals with combating intolerance and discrimination against Muslims. This Recommendation advocates the adoption of a number of specific measures for combating intolerance and discrimination directed against Muslims. In this Recommendation ECRI also expresses regret that Islam is sometimes portrayed inaccurately on the basis of hostile stereotyping, the effect of which is to make this religion seem a threat.

ECRI's General Policy Recommendation No.6 concerns the dissemination of racist material via the Internet. The Recommendation requests governments to take the necessary measures, at national and international levels, to act effectively against the use of Internet for racist, xenophobic and antisemitic aims.

ECRI's General Policy Recommendation No.7 sets out the key elements which should feature in a comprehensive national legislation to effectively combat racism and racial discrimination. The scope of the Recommendation is very wide and covers all branches of the law: constitutional, criminal, civil and administrative. It addresses not only direct and indirect discrimination, but also other legal aspects of the fight against racism, including racist expressions, racists organisations and racially-motivated offences.

ECRI's General Policy Recommendation No.8 focuses on how to ensure that the fight against terrorism does not infringe upon the rights of persons to be free from racism and racial discrimination. This General Policy Recommendation is part of the more general efforts underway in the Council of Europe to ensure respect for human rights while fighting against terrorism.

ECRI's General Policy Recommendation No.9 is devoted to the fight against antisemitism. It sets out a comprehensive set of legal and policy measures to help Council of Europe member States fight against antisemitism, which should be systematically included in a broader policy against all forms of racism. Such measures include, inter alia, strengthening criminal law provisions, stepping up awareness-raising efforts in schools and the systematic collection of information about antisemitic offences.

ECRI's General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education proposes specific measures to member States for ensuring compulsory, free and quality education for all; for combating racism and racial discrimination at school; and for training members of the teaching profession to work in a multicultural environment. For this purpose ECRI recommends the setting-up of a racist incidents monitoring system as well as awareness-raising and disciplinary measures for combating racism and racial discrimination at school.

ECRI's General Policy Recommendation No.11 on combating racism and racial discrimination in policing aims to help the police to promote security and human rights for all through adequate policing and covers racism and racial discrimination in the context of combating all crime, including terrorism. It focuses particularly on racial profiling; racial discrimination and racially motivated misconduct by the police; the role of the police in combating racist offences and monitoring racist incidents; and relations between the police and members of minority groups.

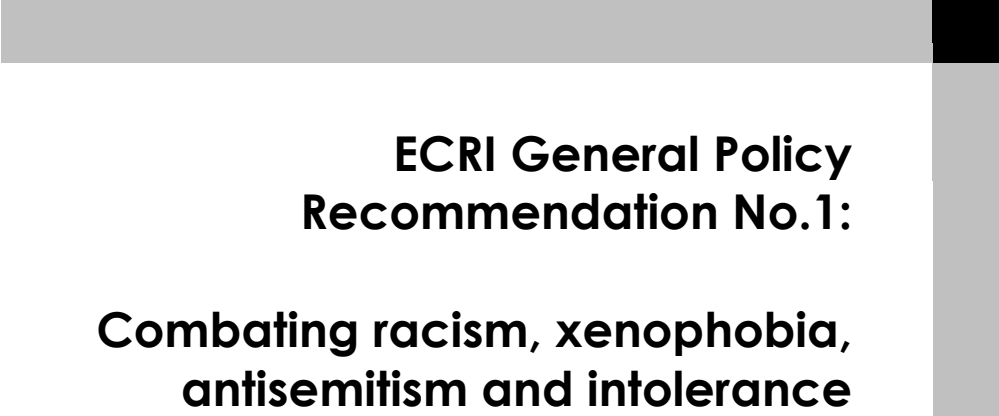
ECRI's General Policy Recommendation No.12 on combating racism and racial discrimination in the field of sport, sets out a wide range of measures that the governments of member States are advised to adopt in order to successfully combat racism and racial discrimination in the field of sport. ECRI's suggestions as to how this can be achieved cover, among other things, ensuring that adequate legal provisions are in place to combat racial discrimination and to penalise racist acts and providing training to the police to enable them to identify, deal with and prevent racist behaviour at sporting events.

ECRI's General Policy Recommendation No.13 on combating anti-Gypsyism and discrimination against Roma reinforces its General Policy Recommendation No.3, in response to a worsening of the situation of Europe's Roma population. In this recommendation, ECRI calls on member states to adopt no less than 90 measures: on the one hand to , ensure the access of Roma to education, employment and other goods and services; and, on the other hand, to combat hate speech, racist crimes and violence against Roma, through both the application of criminal law provisions and preventive and awareness-raising measures. Finally, it emphasises that only a comprehensive and multidisciplinary approach to Roma issues, involving Roma representatives at all levels of policy-making (conception, development, implementation and evaluation) can enhance mutual trust and contribute to the fight against anti-Gypsyism.

ECRI's most recent General Policy Recommendation No.14 on combating racism and racial discrimination in employment urges member states to strengthen legislation and to develop employment best practices to ensure protection against racism and discrimination in employment. It recommends that governments actively promote equality, particularly in recruitment and promotion, and proposes various incentives that they can adopt to encourage employers to eliminate discrimination and promote diversity in the workplace.

Contents

ECRI General Policy Recommendation No.1: Combating racism, xenophobia, antisemitism and intolerance	11
ECRI General Policy Recommendation No.2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level	19
ECRI General Policy Recommendation No.3: Combating racism and intolerance against Roma/Gypsies.....	27
ECRI General Policy Recommendation No.4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims.....	33
ECRI General Policy Recommendation No.5: Combating intolerance and discrimination against Muslims	39
ECRI General Policy Recommendation No.6: Combating the dissemination of racist, xenophobic and antisemitic materiel via the Internet.....	45
ECRI General Policy Recommendation No.7: National legislation to combat racism and racial discrimination	51
ECRI General Policy Recommendation No.8: Combating racism while fighting terrorism.....	75
ECRI General Policy Recommendation No.9: The fight against antisemitism	81
ECRI General Policy Recommendation No.10: Combating racism and racial discrimination in and through school education.....	89
ECRI General Policy Recommendation No.11: Combating racism and racial discrimination in policing	97
ECRI General Policy Recommendation No.12: Combating racism and racial discrimination in the field of sport.....	123
ECRI General Policy Recommendation No.13: Combating anti-gypsyism and discrimination against Roma	147
ECRI General Policy Recommendation No.14: Combating racism and racial discrimination in employment.....	159



**ECRI General Policy
Recommendation No.1:
Combating racism, xenophobia,
antisemitism and intolerance**

Adopted on 4 October 1996

The European Commission against Racism and Intolerance:

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, *inter alia*, to formulate General Policy Recommendations to member States;

Bearing in mind the proposals contained in the Recommendation No.1275 on the fight against racism, xenophobia, antisemitism and intolerance adopted by the Parliamentary Assembly of the Council of Europe on 28 June 1995;

Convinced that effectively countering racism, xenophobia, antisemitism and intolerance requires a sustained and comprehensive approach reflected in a broad range of measures which complement and reinforce one another, covering all aspects of life;

Recognising the social, economic and legal diversity of member States and the need for specific measures in this field to reflect this diversity;

Aware that racism, xenophobia, antisemitism and intolerance cannot be countered by legal measures alone, but emphasising that legal measures are nevertheless of paramount importance and that non-enforcement of relevant existing legislation discredits action against racism and intolerance in general;

Recalling that medium and long-term preventive strategies based on educational and other measures are crucial for curbing the various manifestations of racism, xenophobia, antisemitism and intolerance and expressing in this respect its support for the initiatives taken within the Council of Europe, in particular in the field of history teaching, as well as for Recommendation (84)18 on the training of teachers in education for intercultural understanding, notably in a context of migration and Recommendation R (85)7 on the teaching and learning of human rights in schools;

Acknowledging the active role the media can play in favour of a culture of tolerance and mutual understanding;

Seeking in this first General Policy Recommendation, complementary to other efforts at the international level, to assist member States in combating racism, xenophobia, antisemitism and intolerance effectively, by proposing concrete and specific measures in a limited number of areas which are particularly pertinent;

recommends the following to the Governments of the member States:

A. CONCERNING LAW, LAW ENFORCEMENT AND JUDICIAL REMEDIES

- Ensure that the national legal order at a high level, for example in the Constitution or Basic Law, enshrines the commitment of the State to the equal treatment of all persons and to the fight against racism, xenophobia, antisemitism and intolerance;
- Sign and ratify the relevant international legal instruments listed in the Appendix;
- Ensure that national criminal, civil and administrative law expressly and specifically counter racism, xenophobia, anti-semitism and intolerance, inter alia by providing:
 - that discrimination in employment and in the supply of goods and services to the public is unlawful;
 - that racist and xenophobic acts are stringently punished through methods such as:
 - defining common offences but with a racist or xenophobic nature as specific offences;
 - enabling the racist or xenophobic motives of the offender to be specifically taken into account;
 - that criminal offences of a racist or xenophobic nature can be prosecuted ex officio;
 - that, in conformity with the obligations assumed by States under relevant international instruments and in particular with Articles 10 and 11 of the European Convention on Human Rights, oral, written, audio-visual expressions and other forms of expression, including the electronic media, inciting to hatred, discrimination or violence against racial, ethnic, national or religious groups or against their members on the grounds that they belong to such a group are legally categorised as a criminal offence, which should also cover the production, the distribution and the storage for distribution of the material in question;
- In conformity with the aforementioned international obligations, take measures, including where necessary legal measures, to combat racist organisations - bearing in mind the fact that they can pose a threat to the human rights of minority groups - including banning such organisations where it is considered that this would contribute to the struggle against racism;

- Ensure that the general public is made aware of the legislation combating racism, xenophobia, antisemitism and intolerance;
- Ensure that criminal prosecution of offences of a racist or xenophobic nature is given a high priority and is actively and consistently undertaken;
- Ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted;
- Ensure that adequate legal remedies are available to victims of discrimination, either in criminal law or in administrative and civil law where pecuniary or other compensation may be secured;
- Ensure that adequate legal assistance is available to victims of discrimination when seeking a legal remedy;
- Ensure awareness of the availability of legal remedies and the possibilities of access to them;

B. CONCERNING POLICIES IN A NUMBER OF AREAS

- Take measures in the fields of education and information in order to strengthen the fight against racism, xenophobia, anti-semitism and intolerance;
- Adopt policies that enhance the awareness of the richness that cultural diversity brings to society;
- Undertake research into the nature, causes and manifestations of racism, xenophobia, anti-semitism and intolerance at local, regional and national level;
- Ensure that school-curricula, for example in the field of history teaching, are set up in such a way to enhance the appreciation of cultural diversity;
- Set up and support training courses promoting cultural sensitivity, awareness of prejudice and knowledge of legal aspects of discrimination for those responsible for recruitment and promotion procedures, for those who have direct contact with the public and for those responsible for ensuring that persons in the organisation comply with standards and policies of non-discrimination and equal opportunity;
- Ensure, in particular, that such training is introduced and maintained for the police, personnel in criminal justice agencies, prison staff and personnel dealing with non-citizens, in particular refugees and asylum seekers;

- Encourage public officials to bear in mind the desirability of promoting tolerance in their public comments;
- Ensure that the police provide equal treatment to all members of the public and avoid any act of racism, xenophobia, antisemitism and intolerance;
- Develop formal and informal structures for dialogue between the police and minority communities and ensure the existence of a mechanism for independent enquiry into incidents and areas of conflicts between the police and minority groups;
- Encourage the recruitment of members of public services at all levels, and in particular police and support staff, from minority groups;
- Ensure that all public services and services of a public nature such as healthcare, social services and education provide non-discriminatory access to all members of the public;
- Take specific measures, such as providing targeted information, to ensure that all eligible groups de facto have equal access to these services;
- Promote and increase genuine equality of opportunity by ensuring the existence of special training measures to help people from minority groups to enter the labour market;
- Initiate research into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing;
- Ensure that public sector housing is allocated on the basis of published criteria which are justifiable, i.e. which ensure equal access to all those eligible, irrespective of ethnic origin;
- Since it is difficult to develop and effectively implement policies in the areas in question without good data, to collect, in accordance with European laws, regulations and recommendations on data-protection and protection of privacy, where and when appropriate, data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to racism, xenophobia, antisemitism and intolerance.

APPENDIX

List of relevant international legal instruments

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (1950) and its additional protocols
- United Nations Convention relating to the Status of Refugees (1951)
- Convention of the International Labour Organisation concerning Discrimination in Respect of Employment and Occupation (1958)
- European Social Charter (1961) and its additional protocols
- UNESCO Convention against Discrimination in Education (1960)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Covenant on Civil and Political Rights (1966) and its first additional protocol
- European Charter for Regional or Minority Languages (1992)
- Framework Convention for the Protection of National Minorities (1995)



**ECRI General Policy
Recommendation No.2:**

**Specialised bodies
to combat racism, xenophobia,
antisemitism and intolerance
at national level**

Adopted on 13 June 1997

The European Commission against Racism and Intolerance:

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, inter alia, to formulate General Policy Recommendations to member States;

Taking into account Resolution 48/134 adopted by the General Assembly of the United Nations on 20 December 1993 on National Institutions for the Promotion and Protection of Human Rights;

Taking into account also the fundamental principles laid down at the first International Meeting of the National Institutions for the Promotion and Protection of Human Rights held in Paris from 7-9 October 1991 (known as the "Paris Principles");

Recalling the different Resolutions adopted at the first and second European meetings of National Institutions for the Promotion and Protection of Human Rights, held respectively in Strasbourg on 7-9 November 1994 and in Copenhagen on 20-22 January 1997;

Taking into account Recommendation N° R (85) 13 of the Committee of Ministers on the institution of the Ombudsman;

Taking also into account work carried out by the Steering Committee for Human Rights (CDDH) relating to the establishment of Independent National Human Rights Institutions;

Emphasising that combating racism, xenophobia, antisemitism and intolerance forms an integral part of the protection and promotion of fundamental human rights;

Recalling the proposal of ECRI to reinforce the non-discrimination clause (Article 14) of the European Convention on Human Rights;

Profoundly convinced that everyone must be protected against discrimination based on race, colour, language, religion or national or ethnic origin or against discrimination which might stem indirectly from the application of the law in these areas;

Convinced of the necessity of according the highest priority to measures aiming at the full implementation of legislation and policies intended to combat racism, xenophobia, antisemitism and intolerance;

Recalling that an effective strategy against racism, xenophobia, antisemitism and intolerance resides to a large extent on awareness-raising, information and education of the public as well as on the protection and promotion of the rights of individuals belonging to minority groups;

Convinced that specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level can make a concrete contribution in a variety of ways to strengthening the effectiveness of the range of measures taken in this field and to providing advice and information to national authorities;

Welcoming the fact that such specialised bodies have already been set up and are functioning in several member States;

Recognising that the form such bodies might take may vary according to the circumstances of member States and may form part of a body with wider objectives in the field of human rights generally;

Recognising also the need for governments themselves to provide information and to be accessible to specialised bodies and to consult them on matters relevant to their functions;

recommends to the governments of member States:

1. to consider carefully the possibility of setting up a specialised body to combat racism, xenophobia, antisemitism and intolerance at national level, if such a body does not already exist;
2. in examining this question, to make use of the basic principles set out as an appendix to this recommendation as guidelines and a source of inspiration presenting a number of options for discussion at national level.

Appendix to ECRI General Policy Recommendation No.2

Basic principles concerning specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level

Chapter A: The statutes establishing specialised bodies

Principle 1

Terms of reference

1. Specialised bodies should be given terms of reference which are clearly set out in a constitutional or other legislative text.
2. The terms of reference of specialised bodies should determine their composition, areas of competence, statutory powers, accountability and funding.

Chapter B: Alternative forms of specialised bodies

Principle 2

1. According to the legal and administrative traditions of the countries in which they are set up, specialised bodies may take different forms.
2. The role and functions set out in the above principles should be fulfilled by bodies which may take the form of, for example, national commissions for racial equality, ombudsmen against ethnic discrimination, Centres/Offices for combating racism and promoting equal opportunities, or other forms, including bodies with wider objectives in the field of human rights generally.

Chapter C: Functions and responsibilities of specialised bodies

Principle 3

Subject to national circumstances, law and practice, specialised bodies should possess as many as possible of the following functions and responsibilities:

- a. to work towards the elimination of the various forms of discrimination set out in the preamble and to promote equality of opportunity and good relations between persons belonging to all the different groups in society;

- b. to monitor the content and effect of legislation and executive acts with respect to their relevance to the aim of combating racism, xenophobia, antisemitism and intolerance and to make proposals, if necessary, for possible modifications to such legislation;
- c. to advise the legislative and executive authorities with a view to improving regulations and practice in the relevant fields;
- d. to provide aid and assistance to victims, including legal aid, in order to secure their rights before institutions and the courts;
- e. subject to the legal framework of the country concerned, to have recourse to the courts or other judicial authorities as appropriate if and when necessary;
- f. to hear and consider complaints and petitions concerning specific cases and to seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions;
- g. to have appropriate powers to obtain evidence and information in pursuance of its functions under f. above;
- h. to provide information and advice to relevant bodies and institutions, including State bodies and institutions;
- i. to issue advice on standards of anti-discriminatory practice in specific areas which might either have the force of law or be voluntary in their application;
- j. to promote and contribute to the training of certain key groups without prejudice to the primary training role of the professional organisations involved;
- k. to promote the awareness of the general public to issues of discrimination and to produce and publish pertinent information and documents;
- l. to support and encourage organisations with similar objectives to those of the specialised body;
- m. to take account of and reflect as appropriate the concerns of such organisations;

.....

Chapter D: Administration and functioning of specialised bodies

Principle 4

Composition

The composition of specialised bodies taking the form of commissions and the like should reflect society at large and its diversity.

Principle 5

Independence and accountability

1. Specialised bodies should be provided with sufficient funds to carry out their functions and responsibilities effectively, and the funding should be subject annually to the approval of parliament.
2. Specialised bodies should function without interference from the State and with all the guarantees necessary for their independence including the freedom to appoint their own staff, to manage their resources as they think fit and to express their views publicly.
3. Specialised bodies should independently provide reports of their actions on the basis of clear and where possible measurable objectives for debate in parliament.
4. The terms of reference of specialised bodies should set out clearly the provisions for the appointment of their members and should contain appropriate safeguards against arbitrary dismissal or the arbitrary non-renewal of an appointment where renewal would be the norm.

Principle 6

Accessibility

1. Specialised bodies should be easily accessible to those whose rights they are intended to protect.
2. Specialised bodies should consider, where appropriate, setting up local offices in order to increase their accessibility and to improve the effectiveness of their education and training functions.

.....

Chapter E: Style of operation of specialised bodies

Principle 7

1. Specialised bodies should operate in such a way as to maximise the quality of their research and advice and thereby their credibility both with national authorities and the communities whose rights they seek to preserve and enhance.
2. In setting up specialised bodies, member States should ensure that they have appropriate access to governments, are provided by governments with sufficient information to enable them to carry out their functions and are fully consulted on matters which concern them.
3. Specialised bodies should ensure that they operate in a way which is clearly politically independent.



**ECRI General Policy
Recommendation No.3:**

**Combating racism
and intolerance
against Roma/Gypsies**

Adopted on 6 March 1998

The European Commission against Racism and Intolerance:

Recalling the decision adopted by the Heads of State and Government of the member States of the Council of Europe at their first Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, *inter alia*, to formulate General Policy Recommendations to member States;

Recalling also the Final Declaration and Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their second Summit held in Strasbourg on 10-11 October 1997;

Stressing that this Final Declaration confirms that the goal of the member States of the Council of Europe is to build a freer, more tolerant and just European society and that it calls for the intensification of the fight against racism, xenophobia, antisemitism and intolerance;

Noting the proposal concerning the nomination of a European mediator for Roma/Gypsies contained in Recommendation N° 1203 (1993) of the Parliamentary Assembly of the Council of Europe;

Bearing in mind the conclusions of the human dimension seminar on Roma in the CSCE (OSCE) region organised on 20-23 September 1994 by the Organisation for Security and Co-operation in Europe (OSCE), in

close consultation with the Council of Europe and the continuing co-operation between the two Organisations in this field;

Welcoming the nomination by the Secretary General in 1994 of a Co-ordinator of Council of Europe Activities on Roma/Gypsies;

Bearing in mind the work of the Specialist Group on Roma/Gypsies (MG-S-ROM);

Recalling Recommendation N° R (97) 21 of the Committee of Ministers to member States on the media and the promotion of a climate of tolerance;

Recalling the provisions contained in ECRI's general policy recommendation No.1, which sought to assist member States in combating racism, xenophobia, antisemitism and intolerance effectively, by proposing concrete and specific measures in a limited number of particularly pertinent areas;

Profoundly convinced that Europe is a community of shared values, including that of the equal dignity of all human beings, and that respect for this equal dignity is the cornerstone of all democratic societies;

Recalling that the legacy of Europe's history is a duty to remember the past by remaining vigilant and actively opposing any manifestations of racism, xenophobia, antisemitism and intolerance;

Paying homage to the memory of all the victims of policies of racist persecution and extermination during the Second World War and remembering that a considerable number of Roma/Gypsies perished as a result of such policies;

Stressing in this respect that the Council of Europe is the embodiment and guardian of the founding values - in particular the protection and promotion of human rights - around which Europe was rebuilt after the horrors of the Second World War;

Recalling that combating racism, xenophobia, antisemitism and intolerance forms an integral part of the protection and promotion of human rights, that these rights are universal and indivisible, and that all human beings, without any distinction whatsoever, are entitled to these rights;

Stressing that combating racism, xenophobia, antisemitism and intolerance is above all a matter of protecting the rights of vulnerable members of society;

Convinced that in any action to combat racism and discrimination, emphasis should be placed on the victim and the improvement of his or her situation;

Noting that Roma/Gypsies suffer throughout Europe from persisting prejudices, are victims of a racism which is deeply-rooted in society, are the target of sometimes violent demonstrations of racism and intolerance and that their fundamental rights are regularly violated or threatened;

Noting also that the persisting prejudices against Roma/Gypsies lead to discrimination against them in many fields of social and economic life, and that such discrimination is a major factor in the process of social exclusion affecting many Roma/Gypsies;

Convinced that the promotion of the principle of tolerance is a guarantee of the preservation of open and pluralistic societies allowing for a peaceful co-existence;

recommends the following to Governments of member States:

- to sign and ratify the relevant international legal instruments in the field of combating racism, xenophobia, antisemitism and intolerance, particularly the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages;
- to ensure that the name used officially for the various Roma/Gypsy communities should be the name by which the community in question wishes to be known;
- bearing in mind the manifestations of racism and intolerance of which Roma/Gypsies are victims, to give a high priority to the effective implementation of the provisions contained in ECRI's General Policy Recommendation N° 1, which requests that the necessary measures should be taken to ensure that national criminal, civil and administrative law expressly and specifically counter racism, xenophobia, anti-semitism and intolerance;

- to ensure that discrimination as such, as well as discriminatory practices, are combated through adequate legislation and to introduce into civil law specific provisions to this end, particularly in the fields of employment, housing and education;
- to render illegal any discrimination on the part of public authorities in the exercise of their duties;
- to ensure that suitable legal aid be provided for Roma/Gypsies who have been victims of discrimination and who wish to take legal action;
- to take the appropriate measures to ensure that justice is fully and promptly done in cases concerning violations of the fundamental rights of Roma/Gypsies;
- to ensure in particular that no degree of impunity is tolerated as regards crimes committed against Roma/Gypsies and to let this be clearly known among the general public;
- to set up and support specific training schemes for persons involved at all levels in the various components of the administration of justice, with a view to promoting cultural understanding and an awareness of prejudice;
- to encourage the development of appropriate arrangements for dialogue between the police, local authorities and Roma/Gypsy communities;
- to encourage awareness-raising among media professionals, both in the audiovisual field and in the written press, of the particular responsibility they bear in not transmitting prejudices when practising their profession, and in particular in avoiding reporting incidents involving individuals who happen to be members of the Roma/Gypsy community in a way which blames the Roma/Gypsy community as a whole;
- to take the necessary steps to ensure that rules concerning the issue of *de jure* and *de facto* access to citizenship and the right to asylum are drawn up and applied so as not to lead to particular discrimination against Roma/Gypsies;
- to ensure that the questions relating to "travelling" within a country, in particular regulations concerning residence and town planning, are solved in a way which does not hinder the way of life of the persons concerned;
- to develop institutional arrangements to promote an active role and participation of Roma/Gypsy communities in the decision-making process, through national, regional and local consultative mechanisms, with priority placed on the idea of partnership on an equal footing;
- to take specific measures to encourage the training of Roma/Gypsies, to ensure full knowledge and implementation of their rights and of the functioning of the legal system;

- to pay particular attention to the situation of Roma/Gypsy women, who are often the subject of double discrimination, as women and as Roma/Gypsies;
- to vigorously combat all forms of school segregation towards Roma/Gypsy children and to ensure the effective enjoyment of equal access to education;
- to introduce into the curricula of all schools information on the history and culture of Roma/Gypsies and to provide training programmes in this subject for teachers;
- to support the activities of non-governmental organisations, which play an important role in combating racism and intolerance against Roma/Gypsies and which provide them in particular with appropriate legal assistance;
- to encourage Roma/Gypsy organisations to play an active role, with a view to strengthening civil society;
- to develop confidence-building measures to preserve and strengthen an open and pluralistic society with a view to a peaceful co-existence.



**ECRI General Policy
Recommendation No.4:**

**National surveys
on the experience and perception
of discrimination and racism
from the point of view
of potential victims**

Adopted on 6 March 1998

The European Commission against Racism and Intolerance:

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, *inter alia*, to formulate General Policy Recommendations to member States;

Recalling also the Final Declaration and Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their second Summit held in Strasbourg on 10-11 October 1997;

Stressing that this Final Declaration confirms that the goal of the member States of the Council of Europe is to build a freer, more tolerant and just European society and that it calls for the intensification of the fight against racism, xenophobia, antisemitism and intolerance;

Recalling that in its General Policy Recommendation No.1, ECRI called on States to collect, in accordance with European laws, regulations and recommendation on data-protection and protection of privacy, where and when appropriate, data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to

racism, xenophobia, antisemitism and intolerance;

Stressing that statistical data on racist and discriminatory acts and on the situation of minority groups in all fields of life are vital for the identification of problems and the formulation of policies;

Convinced that such statistical data should be supplemented by data on attitudes, opinions and perceptions;

Considering in this respect that, in addition to surveys among the general population, targeted surveys which ascertain the experiences and perceptions of potential victims as regards the racism and discrimination they face represent an innovative and valuable source of information;

Considering that the results of such surveys may be used in a variety of ways to highlight problems and improve the situation;

Considering moreover that the acknowledgement of the validity of the experiences and perceptions of potential victims conveys an important message both to the population as a whole and to the vulnerable groups themselves;

Welcoming the fact that such surveys have already been organised in a number of member States;

Noting that the organisation of such surveys throughout Europe would provide a more detailed picture of the situation as regards racism and discrimination both on a national level and on a European level:

recommends to the governments of member States to take steps to ensure that national surveys on the experience and perception of racism and discrimination from the point of view of potential victims are organised, drawing inspiration from the guidelines set out in the Appendix to this recommendation.

Appendix to ECRI's General Policy Recommendation No.4

Guidelines for the organisation of surveys on the experience and perception of racism and discrimination from the point of view of potential victims

I. General aims of such surveys

1. The aim of the type of survey outlined in this recommendation is to gain a picture of the problems of racism and intolerance from the point of view of actual and potential victims. This innovative approach involves conducting a survey among members of various groups vulnerable to acts of racism, xenophobia, antisemitism, and intolerance, with questions aiming to elicit information about their experiences of racism and discrimination and how they perceive various aspects of the society in which they live in this respect. The data collected thus concerns the perceptions and experiences of members of vulnerable groups. Such data can supplement and enrich more quantitative data concerning racist incidents and levels of discrimination in various fields and data concerning opinions and attitudes of the majority population towards minority groups and issues of racism and intolerance.

II. Practical organisation of surveys

2. The design and implementation of such surveys might be entrusted to researchers or institutes with experience in the field of racism and intolerance, with the field work being carried out by survey research bodies.
3. The minority groups chosen as "categories" in the survey will depend according to national circumstances, and may include for example immigrant groups, national minorities and/or other vulnerable groups.
4. When choosing which groups to include as "categories", factors to be taken into consideration may include the size of the target population and information already available as to the degrees of discrimination faced by each group (for example, employment statistics, information about complaints of discrimination filed).
5. The inclusion of "control" or "contrast" groups may be appropriate to provide a base-line comparison: for example, a minority group which does not generally seem to face great problems of discrimination and racism might be included in the survey.
6. Good population statistics including information about variables such as place of birth, ethnic origin, religious confession, mother tongue, citizenship etc facilitate the organisation of such surveys. If this sort of census data is not available, alternative means of identifying and reaching the pertinent respondents will have to be found.

7. It should be borne in mind that some groups which might be particularly at risk as regards racism and discrimination - for example, illegal immigrants - may be very hard to reach with such surveys.

III. Survey design

8. In addition to questions concerning the socio-economic background and other factual details, questions in the survey may fall into the following broad categories:

- questions pertaining to concrete situations, such as contacts with various authorities (eg police, health care, social welfare, educational institutions) as well as with other institutions (eg banks, housing agencies) and establishments (eg employers, restaurants, places of entertainment, shops): questions may ask how many times over a specific period of time (eg last year or last five years) respondents have been victims of unfair treatment due to their membership of a minority group and what sort of unfair treatment they have experienced.
- questions pertaining to perceived opportunities to participate on an equal basis in society, awareness of specific measures put in place to improve the situation of minority groups, and extent to which such opportunities have been realised (areas covered to include for example possibilities for success in education and vocational training, employment opportunities)
- questions pertaining to perceptions and attitudes: themes covered may include, as appropriate: amount of trust in institutions, attitudes towards immigration or minority policies, assessments of the country as a racist or xenophobic country, problems connected with religion, attitudes towards other groups, difficulties making contacts with the majority population, identification with the host country and country of origin, plans to stay or to return, where one feels most "at home", etc. The inclusion of such themes makes it possible to unveil interesting relationships between the degree of experienced discrimination and various attitudes and perceptions.

9. It should be noted that such questions mainly generate data on *subjective experiences* of discrimination. However, it is in any case extremely difficult to study acts of discrimination objectively and "in vivo" as they take place in the various walks of life. Reports on subjectively experienced discrimination are valuable as an indicator, particularly when they are assessed against the background of other kinds of information, such as unemployment statistics, police records, complaints filed etc.

IV. Follow-up to surveys

10. Over a period of time, follow-up surveys may be conducted, to explore changing patterns of discrimination and racism over time or to include different groups.
11. The results of the survey may be used in a variety of ways, for example: to highlight areas where action is especially necessary; for the evaluation and elaboration of policies which take into account the experiences and concerns of the groups concerned; to increase public awareness and understanding of the problems of discrimination as seen from the viewpoint of victims; to increase awareness among those working in particular areas of how their institutions and practices are perceived by minority groups (eg police, employers, service providers etc).



**ECRI General Policy
Recommendation No.5:**

**Combating intolerance
and discrimination
against Muslims**

Adopted on 16 March 2000

The European Commission against Racism and Intolerance:

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their first Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, *inter alia*, to formulate General Policy Recommendations to member States;

Recalling also the Final Declaration and Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their second Summit held in Strasbourg on 10-11 October 1997;

Stressing that this Final Declaration confirms that the goal of the member States of the Council of Europe is to build a freer, more tolerant and just European society and that it calls for the intensification of the fight against racism, xenophobia, antisemitism and intolerance;

Recalling that Article 9 of the European Convention on Human Rights protects the right to freedom of thought, conscience and religion;

Recalling also the principle of non-discrimination embodied in Article 14 of the European Convention on Human Rights;

Bearing in mind the proposals contained in Recommendation No.1162 on the contribution of the Islamic civilisation to European culture adopted by the Parliamentary Assembly on 19 September 1991;

Taking note of the conclusions of the Seminar on religion and the integration of immigrants organised by the European Committee on Migration in Strasbourg on 24-26 November 1998;

Stressing that institutional arrangements governing relations between the State and religion vary greatly between member States of the Council of Europe;

Convinced that the peaceful co-existence of religions in a pluralistic society is founded upon respect for equality and for non-discrimination between religions in a democratic state with a clear separation between the laws of the State and religious precepts;

Recalling that Judaism, Christianity and Islam have mutually influenced each other and influenced European civilisation for centuries and recalling in this context Islam's positive contribution to the continuing development of European societies of which it is an integral part;

Concerned at signs that religious intolerance towards Islam and Muslim communities is increasing in countries where this religion is not observed by the majority of the population;

Strongly regretting that Islam is sometimes portrayed inaccurately on the basis of hostile stereotyping the effect of which is to make this religion seem a threat;

Rejecting all deterministic views of Islam and recognising the great diversity intrinsic in the practice of this religion;

Firmly convinced of the need to combat the prejudice suffered by Muslim communities and stressing that this prejudice may manifest itself in different guises, in particular through negative general attitudes but also, to varying degrees, through discriminatory acts and through violence and harassment;

Recalling that, notwithstanding the signs of religious intolerance referred to above, one of the characteristics of present-day Europe is a trend towards a diversity of beliefs within pluralistic societies;

Rejecting all manifestations of religious extremism;

Emphasising that the principle of a multi-faith and multicultural society goes hand in hand with the willingness of religions to co-exist within the context of the society of which they form part;

recommends that the governments of member States, where Muslim communities are settled and live in a minority situation in their countries:

- ensure that Muslim communities are not discriminated against as to the circumstances in which they organise and practice their religion;
- impose, in accordance with the national context, appropriate sanctions in cases of discrimination on grounds of religion;
- take the necessary measures to ensure that the freedom of religious practice is fully guaranteed; in this context particular attention should be directed towards removing unnecessary legal or administrative obstacles to both the construction of sufficient numbers of appropriate places of worship for the practice of Islam and to its funeral rites;
- ensure that public institutions are made aware of the need to make provision in their everyday practice for legitimate cultural and other requirements arising from the multi-faith nature of society;
- ascertain whether discrimination on religious grounds is practised in connection with access to citizenship and, if so, take the necessary measures to put an end to it;
- take the necessary measures to eliminate any manifestation of discrimination on grounds of religious belief in access to education;
- take measures, including legislation if necessary, to combat religious discrimination in access to employment and at the workplace;

- encourage employers to devise and implement “codes of conduct” in order to combat religious discrimination in access to employment and at the workplace and, where appropriate, to work towards the goal of workplaces representative of the diversity of the society in question;
- assess whether members of Muslim communities suffer from discrimination connected with social exclusion and, if so, take all necessary steps to combat these phenomena;
- pay particular attention to the situation of Muslim women, who may suffer both from discrimination against women in general and from discrimination against Muslims;
- ensure that curricula in schools and higher education - especially in the field of history teaching - do not present distorted interpretations of religious and cultural history and do not base their portrayal of Islam on perceptions of hostility and menace;
- ensure that religious instruction in schools respects cultural pluralism and make provision for teacher training to this effect;
- exchange views with local Muslim communities about ways to facilitate their selection and training of Imams with knowledge of, and if possible experience in, the society in which they will work;
- support voluntary dialogue at the local and national level which will raise awareness among the population of those areas where particular care is needed to avoid social and cultural conflict;
- encourage debate within the media and advertising professions on the image which they convey of Islam and Muslim communities and on their responsibility in this respect to avoid perpetuating prejudice and biased information;
- provide for the monitoring and evaluation of the effectiveness of all measures taken for the purpose of combating intolerance and discrimination against Muslims.



**ECRI General Policy
Recommendation No.6:**

**Combating the dissemination
of racist, xenophobic
and antisemitic materiel
via the Internet**

Adopted on 15 December 2000

The European Commission against Racism and Intolerance:

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their first Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, *inter alia*, to formulate General Policy Recommendations to member States;

Recalling also the Final Declaration and Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their second Summit held in Strasbourg on 10-11 October 1997;

Recalling Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination;

Recalling Recommendation No R(92)19 of the Committee of Ministers to member States on video games with a racist content and Recommendation No R(97)20 of the Committee of Ministers to member States on "Hate Speech";

Recalling that, in its General Policy Recommendation No.1, ECRI called on the governments of Council of Europe member States to ensure that national criminal, civil and administrative law expressly and specifically counters racism, xenophobia, antisemitism and intolerance;

Stressing that, in the same recommendation, ECRI asked for the aforementioned law to provide in particular that oral, written, audio-visual expressions and other forms of expression, including the electronic media, inciting to hatred, discrimination or violence against racial, ethnic, national or religious groups or against their members on the grounds that they belong to such a group are legally categorised as a criminal offence, which should also cover the production, the distribution and the storage for distribution of the material in question;

Taking full account of the General Conclusions of the European Conference against racism held in Strasbourg on 11-13 October 2000 as the European regional contribution to the World Conference against racism, racial discrimination, xenophobia and related intolerance, which will be held on 31 August - 7 September 2001 in Durban, South Africa;

Noting that the European Conference against racism urged participating States to make every effort to prosecute those responsible for incitement to racial hatred on the internet and their accomplices;

Welcoming the fact that, in the Political Declaration adopted on 13 October 2000 at the closing session of the European Conference, the member States of the Council of Europe committed themselves to combating all forms of expression which incite racial hatred as well as to take action against the dissemination of such material in the media in general and on the Internet in particular;

Aware of actions and initiatives taken in this field by the United Nations, the OECD, the Council of Europe and the European Union;

Welcoming the progress made by the Council of Europe in suppressing cyber-crime, notably the work on the draft Convention on cyber-crime, and hoping for a prompt finalisation of this first international instrument for suppressing cyber-crime;

Regretting nevertheless that, for the time being, the draft Convention does not include provisions on racist, xenophobic and antisemitic crimes committed via the Internet;

Aware of the positive contribution that the Internet can make to combating racism and intolerance on a world scale;

Recognising that the Internet offers unprecedented means of facilitating the cross-border communication of information on human rights issues related to anti-discrimination;

Stressing that the use of the Internet to set up educational and awareness-raising networks in the field of combating racism and intolerance is a good practice which should be supported and further developed;

Deeply concerned by the fact that the Internet is also used for disseminating racist, xenophobic and antisemitic material, by individuals and groups aiming to incite to intolerance or racial and ethnic hatred;

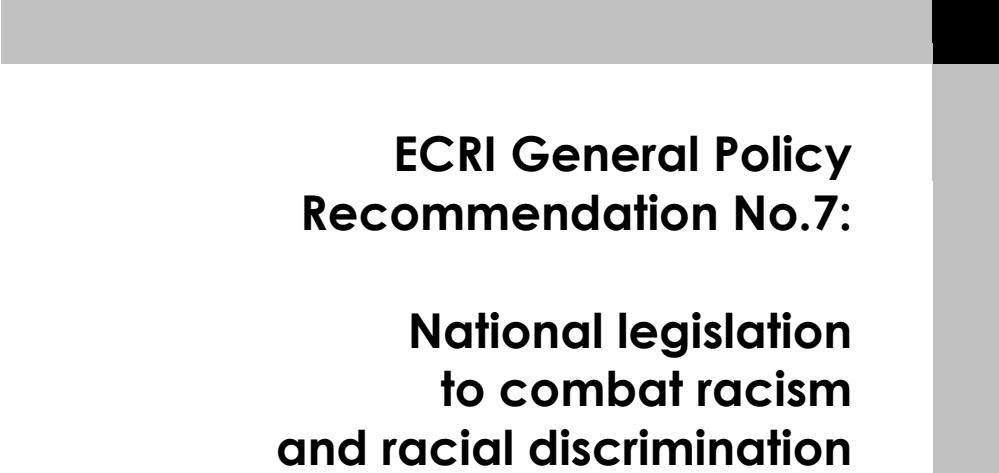
Convinced of the determination of the member States of the Council of Europe to combat the phenomena of racism, xenophobia, antisemitism and intolerance which destroy democracy, and thus to act efficiently against the use of the Internet for racist, xenophobic and antisemitic aims;

Aware that the very nature of the Internet calls for solutions at international level, and thus a willingness on the part of all States to combat incitement to racial hatred, enabling the fundamental principle of respect for human dignity to prevail;

Recommends that the Governments of the member States:

- include the issue of combating racism, xenophobia and antisemitism in all current and future work at international level aimed at the suppression of illegal content on the Internet;
- reflect in this context on the preparation of a specific protocol to the future Convention on cyber-crime to combat racist, xenophobic and antisemitic offences committed via the Internet;
- take the necessary measures for strengthening international co-operation and mutual assistance between law enforcement authorities across the world, so as to take more efficient action against the dissemination of racist, xenophobic and antisemitic material via the Internet;
- ensure that relevant national legislation applies also to racist, xenophobic and antisemitic offences committed via the Internet and prosecute those responsible for this kind of offences;

- undertake sustained efforts for the training of law enforcement authorities in relation to the problem of dissemination of racist, xenophobic and antisemitic material via the Internet;
- reflect, in this context, on the setting up of a national consultation body which might act as a permanent monitoring centre, mediating body and partner in the preparation of codes of conduct;
- support existing anti-racist initiatives on the Internet as well as the development of new sites devoted to the fight against racism, xenophobia, antisemitism and intolerance;
- clarify, on the basis of their respective technical functions, the responsibility of content host and content provider and site publishers as a result of the dissemination of racist, xenophobic and antisemitic messages;
- support the self-regulatory measures taken by the Internet industry to combat racism, xenophobia and antisemitism on the net, such as anti-racist hotlines, codes of conduct and filtering software, and encourage further research in this area;
- increase public awareness of the problem of the dissemination of racist, xenophobic and antisemitic material via the Internet while paying special attention to awareness-raising among young Internet-users - particularly children - as to the possibility of coming upon racist, xenophobic and antisemitic sites and the potential risk of such sites.



**ECRI General Policy
Recommendation No.7:

National legislation
to combat racism
and racial discrimination**

Adopted on 13 December 2002

The European Commission against Racism and Intolerance (ECRI):

Recalling the Declaration adopted by the Heads of State and Government of the member States of the Council of Europe at their first Summit held in Vienna on 8-9 October 1993;

Recalling that the Plan of Action on combating racism, xenophobia, antisemitism and intolerance set out as part of this Declaration invited the Committee of Ministers to establish the European Commission against Racism and Intolerance with a mandate, *inter alia*, to formulate General Policy Recommendations to member States;

Recalling also the Final Declaration and Action Plan adopted by the Heads of State and Government of the member States of the Council of Europe at their second Summit held in Strasbourg on 10-11 October 1997;

Recalling that Article 1 of the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights;

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

Having regard to Convention No 111 of the International Labour Organisation concerning Discrimination (Employment and Occupation);

Having regard to Article 14 of the European Convention on Human Rights;

Having regard to Protocol No 12 to the European Convention on Human Rights which contains a general clause prohibiting discrimination;

Having regard to the case-law of the European Court of Human Rights;

Taking into account the Charter of Fundamental Rights of the European Union;

Taking into account Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation;

Having regard to the Convention on the Prevention and Punishment of the Crime of Genocide;

Recalling ECRI's General Policy Recommendation No 1 on combating racism, xenophobia, antisemitism and intolerance and ECRI's General Policy Recommendation No 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level;

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

Recalling that, in the Political Declaration adopted on 13 October 2000 at the concluding session of the European Conference against racism, the governments of member States of the Council of Europe committed themselves to adopting and implementing, wherever necessary, national legislation and administrative measures that expressly and specifically counter racism and prohibit racial discrimination in all spheres of public life;

Recalling also the Declaration and the Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, from 31 August to 8 September 2001;

Aware that laws alone are not sufficient to eradicate racism and racial discrimination, but convinced that laws are essential in combating racism and racial discrimination;

Stressing the vital importance of appropriate legal measures in combating racism and racial discrimination effectively and in a way which both acts as a deterrent and, as far as possible, is perceived by the victim as satisfactory;

Convinced that the action of the State legislator against racism and racial discrimination also plays an educative function within society, transmitting the powerful message that no attempts to legitimise racism and racial discrimination will be tolerated in a society ruled by law;

Seeking, alongside the other efforts underway at international and European level, to assist member States in their fight against racism and racial discrimination, by setting out in a succinct and precise manner the key elements to be included in appropriate national legislation;

Recommends to the governments of member States:

- a. to enact legislation against racism and racial discrimination, if such legislation does not already exist or is incomplete ;
- b. to ensure that the key components set out below are provided in such legislation.

KEY ELEMENTS OF NATIONAL LEGISLATION AGAINST RACISM AND RACIAL DISCRIMINATION

I. Definitions

1. For the purposes of this Recommendation, the following definitions shall apply :
 - a) “racism” shall mean the belief that a ground such as race¹, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.
 - b) “direct 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.
 - c) “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.

II. Constitutional law

2. The constitution should enshrine the principle of equal treatment, the commitment of the State to promote equality as well as the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin. The constitution may provide that exceptions to the principle of equal treatment may be established by law, provided that they do not constitute discrimination.

¹ Since all human beings belong to the same species, ECRI rejects theories based on the existence of different “races”. However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to “another race” are not excluded from the protection provided for by the legislation.

3. The constitution should provide that the exercise of freedom of expression, assembly and association may be restricted with a view to combating racism. Any such restrictions should be in conformity with the European Convention on Human Rights.

III. Civil and administrative law

4. The law should clearly define and prohibit direct and indirect racial discrimination.
5. The law should provide that the prohibition of racial discrimination does not prevent the maintenance or adoption of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons designated by the grounds enumerated in paragraph 1 b) (henceforth: enumerated grounds), or to facilitate their full participation in all fields of life. These measures should not be continued once the intended objectives have been achieved.
6. The law should provide that the following acts, *inter alia*, are considered as forms of discrimination: segregation; discrimination by association; announced intention to discriminate; instructing another to discriminate; inciting another to discriminate; aiding another to discriminate.
7. The law should provide that the prohibition of discrimination applies to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors, in all areas, notably: employment; membership of professional organisations; education; training; housing; health; social protection; goods and services intended for the public and public places; exercise of economic activity; public services.
8. The law should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions.
9. The law should place public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination. In particular, the law should provide that public authorities should subject the awarding of contracts, loans, grants or other benefits to the condition that a policy of non-discrimination be respected and promoted by the other party. The law should provide that the violation of such condition may result in the termination of the contract, grant or other benefits.
10. The law should ensure that easily accessible judicial and/or administrative proceedings, including conciliation procedures, are available to all victims of discrimination. In urgent cases, fast-track procedures, leading to interim decisions, should be available to victims of discrimination.

11. The law should provide that, if persons who consider themselves wronged because of a discriminatory act establish before a court or any other competent authority facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no discrimination.
12. The law should provide for effective, proportionate and dissuasive sanctions for discrimination cases. Such sanctions should include the payment of compensation for both material and moral damages to the victims.
13. The law should provide the necessary legal tools to review, on an ongoing basis, the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions at the national and local levels. Laws, regulations and administrative provisions found not to be in conformity with the prohibition of discrimination should be amended or abrogated.
14. The law should provide that discriminatory provisions which are included in individual or collective contracts or agreements, internal regulations of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations should be amended or declared null and void.
15. The law should provide that harassment related to one of the enumerated grounds is prohibited.
16. The law should provide for an obligation to suppress public financing of organisations which promote racism. Where a system of public financing of political parties is in place, such an obligation should include the suppression of public financing of political parties which promote racism.
17. The law should provide for the possibility of dissolution of organisations which promote racism.

IV. Criminal law

18. The law should penalise the following acts when committed intentionally:
 - a) public incitement to violence, hatred or discrimination,
 - b) public insults and defamation or
 - c) threatsagainst a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;
- d) the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;

- e) the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes;
 - f) the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material containing manifestations covered by paragraphs 18 a), b), c), d) and e);
 - g) the creation or the leadership of a group which promotes racism ; support for such a group ; and participation in its activities with the intention of contributing to the offences covered by paragraph 18 a), b), c), d), e) and f);
 - h) racial discrimination in the exercise of one's public office or occupation.
19. The law should penalise genocide.
20. The law should provide that intentionally instigating, aiding, abetting or attempting to commit any of the criminal offences covered by paragraphs 18 and 19 is punishable.
21. The law should provide that, for all criminal offences not specified in paragraphs 18 and 19, racist motivation constitutes an aggravating circumstance.
22. The law should provide that legal persons are held responsible under criminal law for the offences set out in paragraphs 18, 19, 20 and 21.
23. The law should provide for effective, proportionate and dissuasive sanctions for the offences set out in paragraphs 18, 19, 20 and 21. The law should also provide for ancillary or alternative sanctions.

V. Common provisions

24. The law should provide for the establishment of an independent specialised body to combat racism and racial discrimination at national level (henceforth: national specialised body). The law should include within the competence of such a body: assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment.

25. The law should provide that organisations such as associations, trade unions and other legal entities which have, according to the criteria laid down by the national law, a legitimate interest in combating racism and racial discrimination, are entitled to bring civil cases, intervene in administrative cases or make criminal complaints, even if a specific victim is not referred to. If a specific victim is referred to, it should be necessary for that victim's consent to be obtained.
26. The law should guarantee free legal aid and, where necessary, a court-appointed lawyer, for victims who wish to go before the courts as applicants or plaintiffs and who do not have the necessary means to do so. If necessary, an interpreter should be provided free of charge.
27. The law should provide protection against any retaliatory measures for persons claiming to be victims of racial offences or racial discrimination, persons reporting such acts or persons providing evidence.
28. The law should provide for one or more independent bodies entrusted with the investigation of alleged acts of discrimination committed by members of the police, border control officials, members of the army and prison personnel.

**EXPLANATORY MEMORANDUM
TO ECRI GENERAL POLICY RECOMMENDATION No.7
ON NATIONAL LEGISLATION TO COMBAT
RACISM AND RACIAL DISCRIMINATION**

Introduction

1. This General Policy Recommendation (hereafter: the Recommendation) focuses on the key elements of national legislation to combat racism and racial discrimination. Although ECRI is aware that legal means alone are not sufficient to this end, it believes that national legislation against racism and racial discrimination is necessary to combat these phenomena effectively.
2. In the framework of its country-by-country approach, ECRI regularly recommends to member States of the Council of Europe the adoption of effective legal measures aimed at combating racism and racial discrimination. The Recommendation aims to provide an overview of these measures and to clarify and complement the recommendations formulated in this respect in ECRI's country-by-country reports. The Recommendation also aims to reflect the general principles contained in the international instruments mentioned in the Preamble.
3. ECRI believes that appropriate legislation to combat racism and racial discrimination should include provisions in all branches of the law, i.e. constitutional, civil, administrative and criminal law. Only such an integrated approach will enable member States to address these problems in a manner which is as exhaustive, effective and satisfactory from the point of view of the victim as possible. In the field of combating racism and racial discrimination, civil and administrative law often provides for flexible legal means, which may facilitate the victims' recourse to legal action. Criminal law has a symbolic effect which raises the awareness of society of the seriousness of racism and racial discrimination and has a strong dissuasive effect, provided it is implemented effectively. ECRI has taken into account the fact that the possibilities offered by the different branches of the law are complementary. As regards in particular the fight against racial discrimination, ECRI recommends that the member States of the Council of Europe adopt constitutional, civil and administrative law provisions, and that, in certain cases, they additionally adopt criminal law provisions.
4. The legal measures necessary to combat racism and racial discrimination at national level are presented in the form of key components which should be contained in the national legislation of member States. ECRI stresses that the measures it recommends are compatible with different legal systems, be they common law or civil law or mixed. Furthermore, those components that ECRI considers to be key to an effective legal framework against racism and racial discrimination may be adapted to the specific conditions of each

country. They could thus be set out in a single special act or laid out in the different areas of national legislation (civil law, administrative law and penal law). These key components might also be included in broader legislation encompassing the fight against racism and racial discrimination. For example, when adopting legal measures against discrimination, member States might prohibit, alongside racial discrimination, other forms of discrimination such as those based on gender, sexual orientation, disability, political or other opinion, social origin, property, birth or other status. Finally, in a number of fields, member States might simply apply general rules, which it is therefore not necessary to set out in this Recommendation. This is the position, for example, in civil law, for multiple liability, vicarious liability, and for the establishment of levels of damages; in criminal law, for the conditions of liability, and the sentencing structure; and in procedural matters, for the organisation and jurisdiction of the courts.

5. In any event, these key components represent only a minimum standard; this means that they are compatible with legal provisions offering a greater level of protection adopted or to be adopted by a member State and that under no circumstances should they constitute grounds for a reduction in the level of protection against racism and racial discrimination already afforded by a member State.

I. Definitions

Paragraph 1 of the Recommendation

6. In the Recommendation, the term “racism” should be understood in a broad sense, including phenomena such as xenophobia, antisemitism and intolerance. As regards the grounds set out in the definitions of racism and direct and indirect racial discrimination (paragraph 1 of the Recommendation), in addition to those grounds generally covered by the relevant legal instruments in the field of combating racism and racial discrimination, such as race, colour and national or ethnic origin, the Recommendation covers language, religion and nationality². The inclusion of these grounds in the definitions of racism and racial discrimination is based on ECRI's mandate, which is to combat racism, antisemitism, xenophobia and intolerance. ECRI considers that these concepts, which vary over time, nowadays cover manifestations targeting persons or groups of persons, on grounds such as race, colour, religion, language, nationality and national and ethnic origin. As a result, the expressions “racism” and “racial discrimination” used in the Recommendation encompass all the phenomena covered by ECRI's mandate. National origin is sometimes interpreted as including the concept of nationality. However, in order to ensure that this concept is indeed covered, it is expressly included in the list of grounds, in addition to national origin. The use of the expression “grounds such as” in the definitions of racism and direct and indirect racial discrimination aims at establishing an open-ended list of

² ECRI understands the term “nationality” as defined in Article 2 a). of the European Convention on Nationality: “ ‘nationality’ means the legal bond between a person and a State and does not indicate the person's ethnic origin”.

grounds, thereby allowing it to evolve with society. However, in criminal law, an exhaustive list of grounds could be established in order to respect the principle of foreseeability which governs this branch of the law.

7. Unlike the definition of racial discrimination (paragraphs 1 b) and c) of the Recommendation), which should be included in the law, the definition of racism is provided for the purposes of the Recommendation, and member States may or may not decide to define racism within the law. If they decide to do so, they may, as regards criminal law, adopt a more precise definition than that set out in paragraph 1 a), in order to respect the fundamental principles of this branch of the law. For racism to have taken place, it is not necessary that one or more of the grounds listed should constitute the only factor or the determining factor leading to contempt or the notion of superiority; it suffices that these grounds are among the factors leading to contempt or the notion of superiority.
8. The definitions of direct and indirect racial discrimination contained in paragraph 1 b) and c) of the Recommendation draw inspiration from those contained in the Directive 2000/43/CE of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and in the Directive 2000/78/CE of the Council of the European Union establishing a general framework for equal treatment in employment and occupation as well as on the case-law of the European Court of Human Rights. In accordance with this case-law, differential treatment constitutes discrimination if it has no objective and reasonable justification. This principle applies to differential treatment based on any of the grounds enumerated in the definition of racial discrimination. However, differential treatment based on race, colour and ethnic origin may have an objective and reasonable justification only in an extremely limited number of cases. For instance, in employment, where colour constitutes a genuine and determining occupational requirement by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, differential treatment based on this ground may have an objective and reasonable justification. More generally, 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.

II. Constitutional law

9. In the Recommendation, the term “constitution” should be understood in a broad sense, including basic laws and written and unwritten basic rules. In paragraphs 2 and 3, the Recommendation provides for certain principles that should be contained in the constitution; such principles are to be implemented by statutory and regulatory provisions.

Paragraph 2 of the Recommendation

10. In paragraph 2, the Recommendation allows for the possibility of providing in the law for exceptions to the principle of equal treatment, provided that they do not constitute discrimination. For this condition to be met, in accordance with the definitions of discrimination proposed in paragraph 1 b) and c) of the Recommendation, the exceptions must have an objective and reasonable justification. This principle applies to all exceptions, including those establishing differential treatment on the basis of nationality.

Paragraph 3 of the Recommendation

11. According to paragraph 3 of the Recommendation, the constitution should provide that the exercise of freedom of expression, assembly and association may be restricted with a view to combating racism. In articles 10 (2) and 11 (2), the European Convention on Human Rights enumerates the aims which may justify restrictions to these freedoms. Although the fight against racism is not mentioned as one of these aims, in its case-law the European Court of Human Rights has considered that it is included. In accordance with the articles of the Convention mentioned above, these restrictions should be prescribed by law and necessary in a democratic society.

III. Civil and administrative law

Paragraph 4 of the Recommendation

12. The Recommendation provides in paragraph 4 that the law should clearly define and prohibit direct and indirect racial discrimination. It offers a definition of direct and indirect racial discrimination in paragraph 1 b) and c). The meaning of the expression “differential treatment” is wide and includes any distinction, exclusion, restriction, preference or omission, be it past, present or potential. The term “ground” must include grounds which are actual or presumed. For instance, if a person experiences adverse treatment due to the presumption that he or she is a Muslim, when in reality this is not the case, this treatment would still constitute discrimination on the basis of religion.
13. Discriminatory actions are rarely based solely on one or more of the enumerated grounds, but are rather based on a combination of these grounds with other factors. For discrimination to occur, it is therefore sufficient that one of the enumerated grounds constitutes one of the factors leading to the differential treatment. The use of restrictive expressions such as “difference of treatment *solely* or *exclusively* based on grounds such as ...” should therefore be avoided.

Paragraph 5 of the Recommendation

14. In its paragraph 5, the Recommendation provides for the possibility of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons designated by the enumerated grounds, or to facilitate their full participation in all fields of life. An example of temporary special measures designed to prevent or compensate for disadvantages linked to the enumerated grounds: a factory owner who has no black employees among his managerial staff but many black employees on the assembly line might organise a training course for black workers seeking promotion. An example of temporary special measures designed to facilitate the full participation, in all fields of life, of persons designated by the enumerated grounds: the police could organise a recruitment campaign designed so as to encourage applications particularly from members of certain ethnic groups who are under-represented within the police.

Paragraph 6 of the Recommendation

15. The Recommendation specifically mentions in paragraph 6 certain acts which should be considered by law as forms of discrimination. In theory, the application of the general legal principles and the definition of discrimination should enable these acts to be covered. However, practice demonstrates that these acts often tend to be overlooked or excluded from the scope of application of the legislation. For reasons of effectiveness, it may therefore be useful for the law to provide expressly that these acts are considered as forms of discrimination.
16. Among the acts which the Recommendation mentions specifically as forms of discrimination, the following warrant a brief explanation:
 - Segregation is the act by which a (natural or legal) person separates other persons on the basis of one of the enumerated grounds without an objective and reasonable justification, in conformity with the proposed definition of discrimination. As a result, the voluntary act of separating oneself from other persons on the basis of one of the enumerated grounds does not constitute segregation.
 - Discrimination by association occurs when a person is discriminated against on the basis of his or her association or contacts with one or more persons designated by one of the enumerated grounds. This would be the case, for example, of the refusal to employ a person because s/he is married to a person belonging to a certain ethnic group.
 - The announced intention to discriminate should be considered as discrimination, even in the absence of a specific victim. For instance, an employment advertisement indicating that Roma/Gypsies need not apply should fall within the scope of the legislation, even if no Roma/Gypsy has actually applied.

Paragraph 7 of the Recommendation

17. According to paragraph 7 of the Recommendation, the prohibition of discrimination should apply in all areas. Concerning employment, the prohibition of discrimination should cover access to employment, occupation and self-employment as well as work conditions, remunerations, promotions and dismissals.
18. As concerns membership of professional organisations, the prohibition of discrimination should cover: membership of an organisation of workers or employers, or any organisation whose members carry on a particular profession; involvement in such organisations; and the benefits provided for by such organisations.
19. Concerning education, the prohibition of discrimination should cover pre-school, primary, secondary and higher education, both public and private. Furthermore, access to education should not depend on the immigration status of the children or their parents.
20. As concerns training, the prohibition of discrimination should cover initial and on-going vocational training, all types and all levels of vocational guidance, advanced vocational training and retraining, including the acquisition of practical work experience.
21. As concerns housing, discrimination should be prohibited in particular in access to housing, in housing conditions and in the termination of rental contracts.
22. As concerns health, discrimination should be prohibited in particular in access to care and treatment, and in the way in which care is dispensed and patients are treated.
23. Concerning social protection, the prohibition of discrimination should cover social security, social benefits, social aid (housing benefits, youth benefits, etc.) and the way in which the beneficiaries of social protection are treated.
24. As concerns goods and services intended for the public and public places, discrimination should be prohibited, for instance, when buying goods in a shop, when applying for a loan from a bank and in access to discotheques, cafés or restaurants. The prohibition of discrimination should not only target those who make goods and services available to others, but also those who receive goods and services from others, as would be the case of a company which selects the providers of a given good or service on the basis of one of the enumerated grounds.
25. Concerning the exercise of economic activity, this field covers competition law, relations between enterprises and relations between enterprises and the State.
26. The field of public services includes the activities of the police and other law enforcement officials, border control officials, the army and prison personnel.

Paragraph 8 of the Recommendation

27. According to paragraph 8 of the Recommendation, the law should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions. The obligations incumbent on such authorities should be spelled out as clearly as possible in the law. To this end, public authorities could be placed under the obligation to create and implement “equality programmes” drawn up with the assistance of the national specialised body referred to in paragraph 24 of the Recommendation. The law should provide for the regular assessment of the equality programmes, the monitoring of their effects, as well as for effective implementation mechanisms and the possibility for legal enforcement of these programmes, notably through the national specialised body. An equality programme could, for example, include the nomination of a contact person for dealing with issues of racial discrimination and harassment or the organisation of staff training courses on discrimination. As regards the obligation to promote equality and prevent discrimination, the Recommendation covers only public authorities; however, it would be desirable were the private sector also placed under a similar obligation.

Paragraph 10 of the Recommendation

28. According to paragraph 10 of the Recommendation, in urgent cases, fast-track procedures, leading to interim decisions, should be available to victims of discrimination. These procedures are important in those situations where the immediate consequences of the alleged discriminatory act are particularly serious or even irreparable. Thus, for example, the victims of a discriminatory eviction from a flat should be able to suspend this measure through an interim judicial decision, pending the final judgement of the case.

Paragraph 11 of the Recommendation

29. Given the difficulties complainants face in collecting the necessary evidence in discrimination cases, the law should facilitate proof of discrimination. For this reason, according to paragraph 11 of the Recommendation, the law should provide for a shared burden of proof in such cases. A shared burden of proof means that the complainant should establish facts allowing for the presumption of discrimination, whereupon the onus shifts to the respondent to prove that discrimination did not take place. Thus, in case of alleged direct racial discrimination, the respondent must prove that the differential treatment has an objective and reasonable justification. For example, if access to a swimming pool is denied to Roma/Gypsy children, it would be sufficient for the complainant to prove that access was denied to these children and granted to non-Roma/Gypsy children. It should then be for the respondent to prove that this denial to grant access was based on an objective and reasonable justification, such as the fact that the children in question did not have bathing hats, as required to access the swimming pool. The same principle should apply to alleged cases of indirect racial discrimination.

30. As concerns the power to obtain the necessary evidence and information, courts should enjoy all adequate powers in this respect. Such powers should be also given to any specialised body competent to adjudicate on an individual complaint of discrimination (see paragraph 55 of the present Explanatory Memorandum).

Paragraph 12 of the Recommendation

31. Paragraph 12 of the Recommendation states that the law should provide for effective, proportionate and dissuasive sanctions for discrimination cases. Apart from the payment of compensation for material and moral damages, sanctions should include measures such as the restitution of rights which have been lost. For instance, the law should enable the court to order re-admittance into a firm or flat, provided that the rights of third parties are respected. In the case of discriminatory refusal to recruit a person, the law should provide that, according to the circumstances, the court could order the employer to offer employment to the discriminated person.
32. In the case of discrimination by a private school, the law should provide for the possibility of withdrawing the accreditation awarded to the school or the non-recognition of the diplomas issued. In the case of discrimination by an establishment open to the public, the law should provide for the possibility of withdrawing a licence and of closing the establishment. For example, in the case of discrimination by a discotheque, it should be possible to withdraw the licence to sell alcohol.
33. Non-monetary forms of reparation, such as the publication of all or part of a court decision, may be important in rendering justice in cases of discrimination.
34. The law should provide for the possibility of imposing a programme of positive measures on the discriminator. This is an important type of remedy in promoting long-term change in an organisation. For instance, the discriminator could be obliged to organise for its staff specific training programmes aimed at countering racism and racial discrimination. The national specialised body should participate in the development and supervision of such programmes.

Paragraph 15 of the Recommendation

35. According to paragraph 15 of the Recommendation the law should provide that harassment related to one of the enumerated grounds is prohibited. Harassment consists in conduct related to one of the enumerated grounds which has the purpose or the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. As far as possible, protection against harassment related to one of the enumerated grounds should not only target the conduct of the author of the harassment but also that of other persons. For instance, it should be possible for the employer to be held responsible, where applicable, for

harassment by colleagues, other employees or third parties (such as clients and suppliers).

Paragraph 16 of the Recommendation

36. Paragraph 16 of the Recommendation states that the law should provide for the obligation to suppress public financing of political parties which promote racism. For example, public financing for electoral campaigns should be refused to such political parties.

Paragraph 17 of the Recommendation

37. Paragraph 17 of the Recommendation states that the law should provide for the possibility of the dissolution of organisations which promote racism. In all cases, the dissolution of such organisations may result only from a Court decision. The issue of the dissolution of these organisations is also dealt with under Section IV - Criminal law (see paragraphs 43 and 49 of the present Explanatory Memorandum).

IV. Criminal law

Paragraph 18 of the Recommendation

38. The Recommendation limits the scope of certain criminal offences set out in paragraph 18 to the condition that they are committed in “public”. Current practice shows that, in certain cases, racist conduct escapes prosecution because it is not considered as being of a public nature. Consequently, member States should ensure that it should not be too difficult to meet the condition of being committed in “public”. Thus, for instance, this condition should be met in cases of words pronounced during meetings of neo-Nazi organisations or words exchanged in a discussion forum on the Internet.
39. Some of the offences set out in paragraph 18 of the Recommendation concern conduct aimed at a “grouping of persons”. Current practice shows that legal provisions aimed at sanctioning racist conduct frequently do not cover such conduct unless it is directed against a specific person or group of persons. As a result, expressions aimed at larger groupings of persons, as in the case of references to asylum seekers or foreigners in general, are often not covered by these provisions. For this reason, paragraph 18 a), b), c), and d) of the Recommendation does not speak of “group” but of “grouping” of persons.
40. The term “defamation” contained in paragraph 18 b) should be understood in a broad sense, notably including slander and libel.
41. Paragraph 18 e) of the Recommendation refers to the crimes of genocide, crimes against humanity and war crimes. The crime of genocide should be understood as defined in Article II of the Convention for the Prevention and Punishment of the Crime of Genocide and Article 6 of the Statute of the International Criminal Court (see paragraph 45 of the present Explanatory Memorandum).

Crimes against humanity and war crimes should be understood as defined in Articles 7 and 8 of the Statute of the International Criminal Court.

42. Paragraph 18 f) of the Recommendation refers to the dissemination, distribution, production or storage of written, pictorial or other material containing racist manifestations. These notions include the dissemination of this material through the Internet. Such material includes musical supports such as records, tapes and compact discs, computer accessories (e.g. floppy discs, software), video tapes, DVDs and games.
43. Paragraph 18 g) of the Recommendation provides for the criminalisation of certain acts related to groups which promote racism. The concept of group includes in particular *de facto* groups, organisations, associations and political parties. The Recommendation provides that the creation of a group which promotes racism should be prohibited. This prohibition also includes maintaining or reconstituting a group which has been prohibited. The issue of the dissolution of a group which promotes racism is also dealt with under Section III - Civil and administrative law (see paragraph 37 of the present Explanatory Memorandum) and below (see paragraph 49 of the present Explanatory Memorandum). Moreover, the notion of "support" includes acts such as providing financing to the group, providing for other material needs, producing or obtaining documents.
44. In its paragraph 18 h) the Recommendation states that the law should penalise racial discrimination in the exercise of one's public office or occupation. On this point, the definitions contained in paragraphs 1 b) and c) and 5 of the Recommendation apply *mutatis mutandis*. Racial discrimination in the exercise of one's public office or occupation includes notably the discriminatory refusal of a service intended for the public, such as discriminatory refusal by a hospital to care for a person and the discriminatory refusal to sell a product, to grant a bank loan or to allow access to a discotheque, café or restaurant.

Paragraph 19 of the Recommendation

45. Paragraph 19 of the Recommendation provides that the law should penalise genocide. To this end, the crime of genocide should be understood as defined in Article II of Convention on the Prevention and Punishment of the Crime of Genocide and Article 6 of the Statute of the International Criminal Court, i.e. as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group". The Recommendation refers only to penalisation of genocide and not of war crimes and crimes against humanity since these are not necessarily of a racist nature. However, if they do present such a nature, the

aggravating circumstance provided for in paragraph 21 of the Recommendation should apply.

Paragraph 20 of the Recommendation

46. Paragraph 20 of the Recommendation provides that instigating, aiding, abetting or attempting to commit any of the criminal offences covered by paragraphs 18 and 19 should be punishable. This recommendation applies only to those offences for which instigating, aiding, abetting or attempting are possible.

Paragraph 21 of the Recommendation

47. According to paragraph 21 of the Recommendation, the racist motivation of the perpetrator of an offence other than those covered by paragraphs 18 and 19 should constitute an aggravating circumstance. Furthermore, the law may penalise common offences but with a racist motivation as specific offences.

Paragraph 22 of the Recommendation

48. According to paragraph 22 of the Recommendation, the law should provide for the criminal liability of legal persons. This liability should come into play when the offence has been committed on behalf of the legal person by any persons, particularly acting as the organ of the legal person (for example, President or Director) or as its representative. Criminal liability of a legal person does not exclude the criminal liability of natural persons. Public authorities may be excluded from criminal liability as legal persons.

Paragraph 23 of the Recommendation

49. According to paragraph 23 of the Recommendation, the law should provide for ancillary or alternative sanctions. Examples of these could include community work, participation in training courses, deprivation of certain civil or political rights (e.g. the right to exercise certain occupations or functions; voting or eligibility rights) or publication of all or part of a sentence. As regards legal persons, the list of possible sanctions could include, besides fines: refusal or cessation of public benefit or aid, disqualification from the practice of commercial activities, placing under judicial supervision, closure of the establishment used for committing the offence, seizure of the material used for committing the offence and the dissolution of the legal person (see on this last point paragraphs 37 and 43 of the present Explanatory Memorandum).

V. Common provisions

Paragraph 24 of the Recommendation

50. According to paragraph 24 of the Recommendation, the law should provide for the establishment of an independent specialised body to combat racism and racial discrimination at national level. The basic principles concerning the statute of such a body, the forms it might take, its functions, responsibilities, administration, functioning and style of operation are set out in ECRI's General Policy Recommendation no 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.
51. The functions attributed to this body should be provided by law. The Recommendation enumerates a certain number of such functions. Assistance to victims covers provision of general advice to victims and legal assistance, including representation in proceedings before the courts. It also covers assistance in seeking friendly settlement of complaints.
52. As concerns investigation powers, in order that a national specialised body may conduct these effectively, it is essential that the law provides the latter with the requisite powers, subject to the rules of procedure of the national legal order. This includes powers granted in the framework of an investigation, such as requesting the production for inspection and examination of documents and other elements; seizure of documents and other elements for the purpose of making copies or extracts; and questioning persons. The national specialised body should also be entitled to bring cases before the courts and to intervene in legal proceedings as an expert.
53. The functions of the national specialised body should also include monitoring legislation against racism and racial discrimination and control of the conformity of legislation with equality principles. In this respect, the national specialised body should be entitled to formulate recommendations to the executive and legislative authorities on the way in which relevant legislation, regulations or practice may be improved.
54. As concerns awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment, the national specialised body could run campaigns in collaboration with civil society; train key groups; issue codes of practice; and support and encourage organisations working in the field of combating racism and racial discrimination.
55. In addition to these functions, the national specialised body may be attributed other responsibilities. Moreover, another body could be entrusted with the adjudication of complaints through legally-binding decisions, within the limits prescribed by the law.

Paragraph 25 of the Recommendation

56. The Recommendation provides in its paragraph 25 that organisations such as associations, trade unions and other legal entities with a legitimate interest should be entitled to bring complaints. Such a provision is important, for instance, in cases where a victim is afraid of retaliation. Furthermore, the possibility for such organisations to bring a case of racial discrimination without reference to a specific victim is essential for addressing those cases of discrimination where it is difficult to identify such a victim or cases which affect an indeterminate number of victims.

Paragraph 27 of the Recommendation

57. According to paragraph 27 of the Recommendation, the law should provide protection against retaliation. Such protection should not only be afforded to the person who initiates proceedings or brings the complaint, but should also be extended to those who provide evidence, information or other assistance in connection with the court proceedings or the complaint. Such protection is vital to encourage the victims of racist offences and discrimination to put forward their complaints to the authorities and to encourage witnesses to give evidence. In order to be effective, the legal provisions protecting against retaliation should provide for an appropriate and clear sanction. This might include the possibility of an injunction order to stop the retaliatory acts and/or to compensate victims of such acts.



**ECRI General Policy
Recommendation No.8:**

**Combating racism
while fighting terrorism**

Adopted on 17 March 2004

The European Commission against Racism and Intolerance:

Having regard to the European Convention on Human Rights, and in particular to its Article 14;

Having regard to Protocol No.12 to the European Convention on Human Rights;

Having regard to the International Covenant on Civil and Political Rights, and in particular to its Articles 2, 4 (1), 20 (2) and 26;

Having regard to the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees;

Having regard to the Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism;

Recalling the Declaration adopted by ECRI at its 26th plenary meeting (Strasbourg 11-14 December 2001);

Recalling ECRI General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination and ECRI General Policy Recommendation No.5 on combating intolerance and discrimination against Muslims;

Recalling the Convention on cybercrime and its additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems as well as ECRI General Policy Recommendation No.6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet;

Recalling the European Convention on the Suppression of Terrorism, the Protocol amending the European Convention on the Suppression of Terrorism and other international instruments against terrorism, notably those adopted in the framework of the United Nations;

Firmly condemning terrorism, which is an extreme form of intolerance;

Stressing that terrorism is incompatible with and threatens the values of freedom, democracy, justice, the rule of law and human rights, particularly the right to life;

Considering that it is therefore the duty of the State to fight against terrorism;

Stressing that the response to the threat of terrorism should not itself encroach upon the very values of freedom, democracy, justice, the rule of law, human rights and humanitarian law that it aims to safeguard, nor should it in any way weaken the protection and promotion of these values;

Stressing in particular that the fight against terrorism should not become a pretext under which racism, racial discrimination and intolerance are allowed to flourish;

Stressing in this respect the responsibility of the State not only to abstain from actions directly or indirectly conducive to racism, racial discrimination and intolerance, but also to ensure a firm reaction of public institutions, including both preventive and repressive measures, to cases where racism, racial discrimination and intolerance result from the actions of individuals and organisations;

Noting that the fight against terrorism engaged by the member States of the Council of Europe since the events of 11 September 2001 has in some cases resulted in the adoption of directly or indirectly discriminatory legislation or regulations, notably on grounds of nationality, national or ethnic origin and religion and, more often, in discriminatory practices by public authorities;

Noting that terrorist acts, and, in some cases, the fight against terrorism have also resulted in increased levels of racist prejudice and racial discrimination by individuals and organisations;

Stressing in this context the particular responsibility of political parties, opinion leaders and the media not to resort to racist or racially discriminatory activities or expressions;

Noting that, as a result of the fight against terrorism engaged since the events of 11 September 2001, certain groups of persons, notably Arabs, Jews, Muslims, certain asylum seekers, refugees and immigrants, certain visible minorities and persons perceived as belonging to such groups, have become particularly vulnerable to racism and/or to racial discrimination across many fields of public life including education, employment, housing, access to goods and services, access to public places and freedom of movement;

Noting the increasing difficulties experienced by asylum seekers in accessing the asylum procedures of the member States of the Council of Europe and the progressive erosion of refugee protection as a result of restrictive legal measures and practices connected with the fight against terrorism;

Stressing the responsibility of the member States of the Council of Europe to ensure that the fight against terrorism does not have a negative impact on any minority group;

Recalling the pressing need for States to favour integration of their diverse populations as a mutual process that can help to prevent the racist or racially discriminatory response of society to the climate generated by the fight against terrorism;

Convinced that dialogue, including on culture and religion, between the different segments of society, as well as education in diversity contribute to combating racism while fighting terrorism;

Convinced that thorough respect of human rights, including the right to be free from racism and racial discrimination, can prevent situations in which terrorism may gain ground;

Recommends to the governments of member States:

- to take all adequate measures, especially through international co-operation, to fight against terrorism as an extreme form of intolerance in full conformity with international human rights law, and to support the victims of terrorism and to show solidarity towards the States that are targets of terrorism;
- to review legislation and regulations adopted in connection with the fight against terrorism to ensure that these do not discriminate directly or indirectly against persons or groups of persons, notably on grounds of "race", colour, language, religion, nationality or national or ethnic origin, and to abrogate any such discriminatory legislation;
- to refrain from adopting new legislation and regulations in connection with the fight against terrorism that discriminate directly or indirectly against persons or groups of persons, notably on grounds of "race", colour, language, religion, nationality or national or ethnic origin;
- to ensure that legislation and regulations, including legislation and regulations adopted in connection with the fight against terrorism, are implemented at national and local levels in a manner that does not discriminate against persons or groups of persons, notably on grounds of actual or supposed "race", colour, language, religion, nationality, national or ethnic origin;
- to pay particular attention to guaranteeing in a non discriminatory way the freedoms of association, expression, religion and movement and to ensuring that no discrimination ensues from legislation and regulations - or their implementation - notably governing the following areas:
 - checks carried out by law enforcement officials within the countries and by border control personnel
 - administrative and pre-trial detention
 - conditions of detention
 - fair trial, criminal procedure
 - protection of personal data
 - protection of private and family life
 - expulsion, extradition, deportation and the principle of *non-refoulement*
 - issuing of visas
 - residence and work permits and family reunification
 - acquisition and revocation of citizenship;
- to ensure that their national legislation expressly includes the right not to be subject to racial discrimination among the rights from which no derogation may be made even in time of emergency;
- to ensure that the right to seek asylum and the principle of *non-refoulement* are thoroughly respected in all cases and without discrimination, notably on grounds of country of origin;
- to pay particular attention in this respect to the need to ensure access to the asylum procedure and a fair mechanism for the examination of the claims that safeguards basic procedural rights;

- to ensure that adequate national legislation is in force to combat racism and racial discrimination and that it is effectively implemented, especially in the fields of education, employment, housing, access to goods and services, access to public places and freedom of movement;
- to ensure that adequate national legislation is in force to combat racially motivated crimes, racist expression and racist organisations and that it is effectively implemented;
- to draw inspiration, in the context of ensuring that legislation in the areas mentioned above is adequate, from ECRI General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination;
- to ensure that relevant national legislation applies also to racist offences committed via the Internet and to prosecute those responsible for these kinds of offences;
- to ensure the existence and functioning of an independent specialised body to combat racism and racial discrimination competent, *inter alia*, in assisting victims in bringing complaints of racism and racial discrimination that may arise as a result of the fight against terrorism;
- to encourage debate within the media profession on the image that they convey of minority groups in connection with the fight against terrorism and on the particular responsibility of the media professions, in this connection, to avoid perpetuating prejudices and spreading biased information;
- to support the positive role the media can play in promoting mutual respect and countering racist stereotypes and prejudices;
- to encourage integration of their diverse populations as a mutual process and ensure equal rights and opportunities for all individuals;
- to introduce into the school curricula, at all levels, education in diversity and on the need to combat intolerance, racist stereotypes and prejudices, and raise the awareness of public officials and the general public on these subjects;
- to support dialogue and promote joint activities, including on culture and religion, among the different segments of society on the local and national levels in order to counter racist stereotypes and prejudices.



**ECRI General Policy
Recommendation No.9:
The fight against antisemitism**

Adopted on 25 June 2004

The European Commission against Racism and Intolerance:

Having regard to Article 14 of the European Convention on Human Rights;

Having regard to Protocol No.12 to the European Convention on Human Rights which contains a general clause prohibiting discrimination;

Having regard to the case-law of the European Court of Human Rights and recalling that the Court held that disputing the existence of crimes against humanity committed under the National-Socialist regime was one of the most severe forms of racial defamation and of incitement to hatred of Jews and that the denial of such crimes against humanity and the justification of a pro-Nazi policy could not be allowed to enjoy the protection afforded by Article 10 of the European Convention on Human Rights;

Having regard to the Additional Protocol to the Convention on Cybercrime concerning criminalisation of acts of a racist or xenophobic nature committed through computer systems;

Recalling ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance and ECRI's General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level;

Recalling also ECRI's General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, which contains the key elements of appropriate legal measures in combating racism and racial discrimination effectively;

Bearing in mind the Declaration of Concern and Intent on "Antisemitism in Europe today" adopted on 27 March 2000 by the participants in the Strasbourg "Consultation on Antisemitism in Europe today", convened by the Secretary General of the Council of Europe;

Having regard to Recommendation (2001) 15 of the Committee of Ministers to member States on history teaching in twenty-first century Europe, which was confirmed by Ministers of Education at the ministerial seminar held in Strasbourg in October 2002;

Recalling the principles contained in the Charter of European political parties for a non-racist society;

Taking note of the conclusions of the OSCE Conferences on Antisemitism held in Vienna on 19-20 June 2003 and in Berlin on 28-29 April 2004;

Recalling the work of the European Union in combating racism and discrimination and taking note of the conclusions of the seminar on "Europe against antisemitism, for a Union of Diversity" organised in Brussels on 19 February 2004;

Recalling that the legacy of Europe's history is a duty to remember the past by remaining vigilant and actively opposing any manifestations of racism, xenophobia, antisemitism and intolerance;

Paying homage to the memory of the victims of the systematic persecution and extermination of Jews in the Shoah, as well as of the other victims of policies of racist persecution and extermination during the Second World War;

Paying homage to the Jewish victims of killings and systematic persecution under totalitarian regimes following the Second World War, as well as other victims of these policies;

Stressing in this respect that the Council of Europe was precisely founded in order to defend and promote common and just values - in particular the protection and promotion of human rights - around which Europe was rebuilt after the horrors of the Second World War;

Recalling that combating racism, xenophobia, antisemitism and intolerance is rooted in and forms part of the protection and promotion of human rights;

Profoundly convinced that combating antisemitism, while requiring actions taking into account its specificities, is an integral and intrinsic component of the fight against racism;

Stressing that antisemitism has persisted for centuries across Europe;

Observing the current increase of antisemitism in many European countries, and stressing that this increase is also characterised by new manifestations of antisemitism;

Noting that these manifestations have often closely followed contemporary world developments such as the situation in the Middle East;

Underlining that these manifestations are not exclusively the actions of marginal or radical groups, but are often mainstream phenomena, including in schools, that are becoming increasingly perceived as commonplace occurrences;

Observing the frequent use of symbols from the Nazi era and references to the Shoah in current manifestations of antisemitism;

Stressing that these manifestations originate in different social groups and different sectors of society;

Observing that the victims of racism and exclusion in some European societies, themselves sometimes become perpetrators of antisemitism;

Noting that in a number of countries, antisemitism, including in its new forms, continues to be promoted, openly or in a coded manner, by some political parties and leaders, including not only extremist parties, but also certain mainstream parties;

Believing that an adequate response to these phenomena can only be developed through the concerted efforts of all relevant actors in European societies, including representatives of different communities, religious leaders, civil society organisations and other key institutions;

Stressing that efforts to counter antisemitism should include the thorough implementation of legal provisions against racism and racial discrimination in respect of all perpetrators and for the benefit of all victims, with special emphasis on the provisions against incitement to racial violence, hatred and discrimination;

Convinced furthermore that these efforts should also include the promotion of dialogue and cooperation between the different segments of society on the local and national levels, including dialogue and cooperation between different cultural, ethnic and religious communities;

Emphasising strongly the role of education in the promotion of tolerance and respect for human rights, thereby against antisemitism;

Recommends that the governments of the member States:

- give a high priority to the fight against antisemitism, taking all necessary measures to combat all of its manifestations, regardless of their origin;
- ensure that actions aimed at countering antisemitism are consistently given their due place amongst actions aimed at countering racism;
- ensure that the fight against antisemitism is carried out at all administrative levels (national, regional, local) and facilitate the involvement of a wide range of actors from different sectors of society (political, legal, economic, social, religious, educational) in these efforts;
- enact legislation aimed at combating antisemitism taking into account ECRI's suggestions in its General Policy Recommendation No 7 on national legislation to combat racism and racial discrimination;
- ensure that the law provides that, for all criminal offences, racist motivation constitutes an aggravating circumstance, and that such motivation covers antisemitic motivation;
- ensure that criminal law in the field of combating racism covers antisemitism and penalises the following antisemitic acts when committed intentionally:
 - a. public incitement to violence, hatred or discrimination against a person or a grouping of persons on the grounds of their Jewish identity or origin;
 - b. public insults and defamation of a person or a grouping of persons on the grounds of their actual or presumed Jewish identity or origin;
 - c. threats against a person or a grouping of persons on the grounds of their actual or presumed Jewish identity or origin;
 - d. the public expression, with an antisemitic aim, of an ideology which depreciates or denigrates a grouping of persons on the grounds of their Jewish identity or origin;
 - e. the public denial, trivialisation, justification or condoning of the Shoah;
 - f. the public denial, trivialisation, justification or condoning, with an antisemitic aim, of crimes of genocide, crimes against humanity or war crimes committed against persons on the grounds of their Jewish identity or origin;
 - g. the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with an antisemitic aim, of written, pictorial or other material containing manifestations covered by points a), b), c), d), e), f) above;
 - h. desecration and profanation, with an antisemitic aim, of Jewish property and monuments;

- i. the creation or the leadership of a group which promotes antisemitism; support for such a group (such as providing financing to the group, providing for other material needs, producing or obtaining documents); participation in its activities with the intention of contributing to the offences covered by points a), b), c), d), e), f), g), h) above;
- ensure that criminal legislation covers antisemitic crimes committed via the internet, satellite television and other modern means of information and communication;
- ensure that the law provides for an obligation to suppress public financing of organisations which promote antisemitism, including political parties;
- ensure that the law provides for the possibility of disbanding organisations that promote antisemitism;
- take the appropriate measures to ensure that legislation aimed at preventing and sanctioning antisemitism is effectively implemented;
- offer targeted training to persons involved at all levels of the criminal justice system - police, prosecutors, judges - with a view to increasing knowledge about antisemitic crimes and how such acts can be effectively prosecuted;
- take steps to encourage victims of antisemitic acts to come forward with complaints of antisemitic acts, and put in place an effective system of data collection to thoroughly monitor the follow-up given to such complaints;
- establish and support the functioning of an independent specialised body along the lines set out in ECRI's General Policy Recommendation No 2 on Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, and ensure that the actions carried out by this organ cover all forms of antisemitism;
- introduce anti-racist education into the school curriculum at all levels and in an integrated manner, including content that builds awareness about antisemitism, its occurrences through centuries and the importance of combating its various manifestations, ensuring that teachers are provided with the necessary training;
- promote learning about Jewish history as well as about the positive contribution of Jewish persons, communities and culture to European societies;
- promote learning about the Shoah, and the developments leading up to it, within schools and ensure that teachers are adequately trained in order to address this issue in a manner whereby children also reflect upon current dangers and how the recurrence of such an event can be prevented;
- promote learning and research into the killings and systematic persecution of Jewish and other persons under totalitarian regimes following the Second World War;

- where antisemitic acts take place in a school context, ensure that, through targeted training and materials, school directors, teachers and other personnel are adequately prepared to effectively address this problem;
- encourage debate within the media professions on their role in fighting antisemitism, and on the particular responsibility of media professionals to seek to, in this connection, report on all world events in a manner that avoids perpetuating prejudices;
- support the positive role the media can play in promoting mutual respect and countering antisemitic stereotypes and prejudices;
- support and encourage research projects and independent monitoring of manifestations of antisemitism;
- support the activities of non-governmental organisations, which play an important role in fighting antisemitism, promoting appreciation of diversity, and developing dialogue and common anti-racist actions between different cultural, ethnic and religious communities;
- take the necessary measures to ensure that the freedom of religion is fully guaranteed, and that public institutions make provision in their everyday practice for the reasonable accommodation of cultural and other requirements;
- support dialogue between different religious communities at local and national levels in order to counter racist stereotypes and prejudices, including through providing financing and establishing institutional fora for multifaith dialogue;
- ensure that religious leaders at all levels avoid fueling antisemitism, and encourage religious leaders to take responsibility for the teachings spread at the grassroots level;
- encourage political actors and opinion leaders to take a firm public stand against antisemitism, regularly speaking out against its various manifestations, including all its contemporary forms, and making clear that antisemitism will not be tolerated.



**ECRI General Policy
Recommendation No.10:**

**Combating racism
and racial discrimination
in and through
school education**

Adopted on 15 December 2006

The European Commission against Racism and Intolerance (ECRI):

Having regard to Article 26 of the Universal Declaration of Human Rights;

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

Having regard to the United Nations Convention on the Rights of the Child;

Having Regard to the UNESCO Convention against Discrimination in Education;

Having regard to the European Convention on Human Rights, in particular its Article 14 and Article 2 of its Protocol No.1;

Having regard to Protocol No.12 to the European Convention on Human Rights, which contains a general clause prohibiting discrimination;

Having regard to the European Social Charter (Revised) and in particular Article 17 thereof;

Having regard to the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems;

Having regard to Committee of Ministers Recommendation (2000)4 to member States on the education of Roma/Gypsy children in Europe;

Having regard to Committee of Ministers Recommendation (2001)15 to member States on history teaching in twenty-first century Europe;

Having regard to Committee of Ministers Recommendation (2002)12 to member States on education for democratic citizenship;

Having regard to Parliamentary Assembly Recommendation 1093(1989) on the education of migrants' children;

Having regard to Parliamentary Assembly Recommendation 1346(1997) on human rights education;

Having regard to Parliamentary Assembly Recommendation 1720(2005) on education and religion;

Taking into account the general conclusions adopted by the European Conference against Racism on 13 October 2000, in particular those concerning education and awareness-raising to combat racism, related discrimination and extremism at sub-national, national, regional and international levels;

Taking into account the Commentary on Education under the Framework Convention for the Protection of National Minorities adopted by the Advisory Committee of the Framework Convention;

Recalling ECRI General Policy Recommendation No.3 on combating racism and intolerance against Roma/Gypsies; ECRI General Policy Recommendation No.5 on combating intolerance and discrimination against Muslims; ECRI General Policy Recommendation No.9 on the fight against antisemitism;

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

Recalling that ECRI's mandate is to combat racism and racial discrimination, that is to combat violence, discrimination and prejudice faced by persons or groups of persons on grounds such as race, colour, language, religion, nationality or national or ethnic origin;

Stressing that the scope of this Recommendation is limited to pre-primary, primary and secondary education;

Aware however that in higher education combating racism and racial discrimination is equally important;

Aware also that informal and non formal education can play a significant role in this field;

Aware that civil society organisations are implementing effective anti-discrimination education and diversity training programmes for youth within the school environment;

Recalling that education is an important tool for combating racism and intolerance, and yet aware that it is also an area in which racism and racial discrimination can exist, with harmful consequences for children and society as a whole;

Rejecting all forms of direct and indirect discrimination in access to schooling;

Recalling that national legislation to combat racism and racial discrimination should cover, among others, the field of education and that the prohibition of discrimination should apply to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors;

Recalling that school education is a right and that access to it should be granted to all children present on the territory of member States, regardless of their legal status or that of their parents, and independently of the laws on asylum, immigration and acquisition of citizenship;

Convinced that quality education includes also diversity;

Convinced that schools must recognise and respect diversity;

Deploring the existence, sometimes, of de facto segregation in school education which is due to historical factors or to external factors such as the housing problem;

Stressing that measures to ensure the integration of children from minority groups in the school system must not in fact lead to forcible assimilation;

Emphasising that special measures can improve the access of children from minority groups to school education and to good teaching;

Recalling that human rights education based on the principles of equality, non-discrimination, tolerance and respect for diversity can play a key role in combating racism and intolerance in general;

Convinced of the need to ensure that all schools conform to satisfactory standards in respect of teaching in these areas;

Recalling the importance of ensuring that school textbooks and other teaching aids not spread prejudice and stereotypes;

Aware of the growing importance of modern technology, including the Internet, in school education and the need for this to be taken into account for questions relating to the fight against racism and racial discrimination;

Convinced of the need for mandatory training on teaching in a multicultural context to be given to all educational staff;

Convinced of the importance of initial and on-going training for educational staff in matters pertaining to human rights and combating racial discrimination;

Urging that all school authorities be placed under an obligation to promote equality and that progress on compliance with this obligation be properly monitored;

Recommends that the governments of member States:

1. Ensure compulsory, free and quality education for all, and to this end:

1. undertake, in conjunction with civil society organisations, studies on the situation of children from minority groups in the school system, by compiling statistics on their: attendance and completion rates; drop-out rates; results achieved and progress made;
2. gather the information required to identify problems facing pupils from minority groups in the school environment in order to introduce policies to solve these problems;
3. conceive, at national and regional level, in co-operation with the minority groups concerned, policies to further attendance and full participation of pupils from minority groups, on an equal footing, in the school system:
 - a) by ensuring that schools have an obligation to promote equality in education;
 - b) by devising, in consultation with all the parties concerned and taking into account the socio-economic dimension (employment and housing) policies to avoid, in the best interests of the child, pupils from minority groups being over-represented in certain schools;
 - c) by making provision, in particular cases and for a limited period of time, for preparatory classes for pupils from minority groups to, amongst others, learn the language of instruction, if this is justified by objective and reasonable criteria and is in the best interests of the child;
 - d) by introducing policies to avoid placing children from minority groups in separate classes;
 - e) by ensuring that policies promoting more diversity at school are supported by awareness-raising measures targeting pupils, the pupils' parents and educational staff;
 - f) by ensuring that teaching staff from minority groups are recruited at all levels and that they are not subjected to racial discrimination in the school system;
 - g) by ensuring that parents of pupils from minority groups are sufficiently informed of the consequences of any special measures envisaged for their children to allow for an informed consent;
 - h) by providing parents of pupils from minority groups who do not speak the majority language the necessary resources, such as the services of an interpreter and/or language courses, to enable them to communicate with the educational staff;
 - i) by ensuring that parents of pupils from minority groups can fully participate in the school's decisions and activities;

- j) by having recourse, where necessary, to school mediators or any regional, national or NGO mediation service, to facilitate the integration in school of children from minority groups and to ensure good communication between parents and the school authorities;

II. Combat racism and racial discrimination at school, and to this end:

1. ensure that schools are obliged to incorporate the fight against racism and racial discrimination as well as respect for diversity into the way that they are run:
 - a) by ensuring that the fight against such phenomena in schools, whether they emanate from pupils or educational staff, is part of a permanent policy;
 - b) by setting up a system to monitor racist incidents at school and compile data on these phenomena in order to devise long-term policies to counter them;
 - c) by adopting, in order to combat incidents of racism or discrimination which do not cause physical harm, educational measures such as, for example, non formal education activities in organisations dealing with victims of racism and racial discrimination;
 - d) by treating incitement to racial hatred in schools and any other serious racist act, including the use of violence, threats or damage to property, as acts punishable by suspension or expulsion or any other appropriate measure;
 - e) by encouraging within schools the adoption of a code of conduct against racism and racial discrimination for all staff;
 - f) by favouring measures (such as special anti-racism days or weeks, campaigns or competitions) to foster awareness among both pupils and parents of racism and racial discrimination issues and the relevant school policies;
2. ensure that school education plays a key-role in the fight against racism and racial discrimination in society:
 - a) by ensuring that human rights education is an integral part of the school curriculum at all levels and across all disciplines, from nursery school onwards;
 - b) by ensuring that pupils are given an instruction on religion which complies with the scientific neutrality essential in any educational approach;
 - c) by ensuring that, where public schools provide denominational religious education, easy procedures of discharge are in place for children for whom an exemption is requested;
 - d) by removing from textbooks any racist material or material that encourages stereotypes, intolerance or prejudice against any minority group;
 - e) by promoting critical thinking among pupils and equipping them with the necessary skills to become aware of and react to stereotypes or intolerant elements contained in material they use;

- f) by revising school textbooks to ensure that they reflect more adequately the diversity and plurality of the society, and include, to this end, minority groups' contribution to society;
- g) by ensuring that the quality of school textbooks is regularly monitored in co-operation with all concerned so as to remove any racist or discriminatory elements;
- h) by teaching pupils to use the Internet as a means of learning how to combat racism and racial discrimination, while providing for the necessary resources, such as filtering software, to protect them against any racist messages;
- i) by ensuring that bodies involved in monitoring the quality of education, such as Ministries of Education and/or School Inspectorates regularly include monitoring of racism and racial discrimination in their work;

III. Train the entire teaching staff to work in a multicultural environment, and to this end:

- 1. provide them, at all levels, with initial and on-going training to prepare them to educate and respond to the needs of pupils from different backgrounds;
- 2. provide them with initial and on-going training designed to foster awareness of issues pertaining to racism and racial discrimination and of the harmful consequences these have on the ability of children who are victims of these phenomena to succeed at school;
- 3. ensure that they receive training on anti-discrimination legislation at national level;
- 4. ensure that they are trained to prevent at school any manifestations of racism and racial discrimination, including indirect and structural discrimination, and to react promptly and effectively when faced with such problems;
- 5. provide them with initial and on-going training in issues relating to human rights and racial discrimination, which covers, inter alia, the following:
 - a) international and European standards;
 - b) the use of teaching material specifically intended for teaching human rights, including the right to equality; and
 - c) the use of interactive and participatory teaching methods;
- 6. provide a framework in which the members of the teaching profession can regularly share experiences and update methods used for teaching human rights, including the right to equality;

IV. Ensure that all the policies advocated above receive the necessary financial resources and that they are regularly monitored to assess their impact and adjust them when necessary.



**ECRI General Policy
Recommendation No.11:**

**Combating racism
and racial discrimination
in policing**

Adopted on 29 June 2007

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.



**ECRI General Policy
Recommendation No.12:**

**Combating racism
and racial discrimination
in the field of sport**

Adopted on 19 December 2008

The European Commission against Racism and Intolerance (ECRI):

Having regard to Article 14 of the European Convention on Human Rights, Protocol No.12 to this Convention and the case-law of the European Court of Human Rights;

Having regard to the Additional Protocol to the Convention on cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems;

Having regard to the revised European Sports Charter;

Having regard to Recommendation (2001)6 of the Committee of Ministers to member States on the prevention of racism, xenophobia and racial intolerance in sport;

Recalling ECRI's General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level;

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

Recalling ECRI's General Policy Recommendation No.11 on combating racism and racial discrimination in policing;

Bearing in mind ECRI's Declaration on the occasion of EURO 2008 "Unite against racism";

Underlining that the fundamental values of sport which include fair play, friendly rivalry, mutual respect and tolerance should be at the heart of any sporting activity;

Emphasising that the protection against racism and racial discrimination is a human right, which must be secured also in the field of sport;

Convinced that the general public should be involved in the fight against racism and intolerance in sport, in a spirit of international solidarity and friendship;

Aware that sport not only has a role in education and socialisation, but that it can also help to explore and celebrate diversity;

Deeply regretting the existence of racism and of racial discrimination in sport and noting that these phenomena concern many sports and can manifest themselves at all levels;

Strongly condemning the manifestations of racism, xenophobia, antisemitism and intolerance which occur during and in relation to sports events and recalling that these phenomena constitute a serious threat to sport and its ethics;

Rejecting any attempt to trivialise racist acts committed during sports events;

Seeking to strengthen the implementation in the field of sport of international and European human rights protection standards;

Recommends that the governments of member States:

I. Ensure equal opportunities in access to sport for all, and to this end:

1. gather information on the situation and representation of minority groups in sports, including the collection of good practices in this field;
2. conceive appropriate and effective legal and policy measures, including:
 - a) the adoption of adequate anti-discrimination legislation to prevent discrimination in access to sport;
 - b) the promotion of equal opportunities policies in order to achieve a more balanced representation of minority groups in sports at all levels;
 - c) the removal of legal and administrative barriers for non-citizens to participate in local and national sports competitions, where appropriate;
 - d) the promotion of physical education for all at school;
 - e) the adoption of integration programmes with a special emphasis on promoting access to sport of children from minority backgrounds;
3. invite local authorities:
 - a) to support and facilitate the participation of minority groups in sports, including in the working of local sport structures;
 - b) to advise and support local sports clubs and partners regarding equal opportunity programmes;
 - c) to organise sport-related outreach activities bringing together people from different backgrounds;
4. invite sports federations and sports clubs:
 - a) to adopt diversity and equal opportunity policies in order to ensure balanced representation of minority groups in sports at all levels;
 - b) to take measures to attract supporters of different minority backgrounds to sports events;

II. Combat racism and racial discrimination in sport, and to this end:

5. ensure that general and, as necessary, specific legislation against racism and racial discrimination in sport is in place. In particular, the legislator should provide:
 - a) a clear definition of racism and racial discrimination;
 - b) that specific forms of racism and racial discrimination, as necessary, are defined and prohibited;
 - c) adequate and comprehensive anti-discrimination legislation;
 - d) legal provisions penalising racist acts;
 - e) that dissemination of racist material via the internet is prohibited;

- f) that remedies are available for victims of racism and racial discrimination in sport;
 - g) that security regulations allow the police and security personnel to stop, report and document racist behaviour;
 - h) that sports clubs and federations are held responsible for racist acts committed during sports events;
6. ensure that legislation aimed at preventing and sanctioning racist offences in the field of sport is effectively implemented, and to this end:
 - a) provide clear elements and guidelines for the identification of racist acts;
 - b) have clear mechanisms in place for reporting and dealing with racist behaviour;
 - c) establish monitoring and data collection systems;
 - d) offer targeted training to persons involved at all levels of the justice system;
 - e) take steps to encourage victims of racist acts to come forward with complaints and to monitor the follow-up given to such complaints;
 - f) ensure the existence and effective functioning of an independent anti-discrimination body competent, inter alia, in assisting victims in bringing complaints of racism and racial discrimination;
 7. organise and finance large scale anti-racism awareness raising campaigns in sport at all levels, involving all relevant actors;
 8. request that local authorities:
 - a) mainstream the fight against racism and racial discrimination in their regular activities, in particular in their work with bodies dealing with sport;
 - b) support movements and initiatives to promote sportsmanship and tolerance, as well as educational and social projects in this field;
 - c) provide the local police force with adequate training for dealing with racist incidents in and outside sports grounds;
 9. request that the police:
 - a) undergo training on how to deal with racist incidents which occur during sporting events and on how to identify the perpetrators;
 - b) adopt joint strategies with the security personnel of the organisers of sporting events for dealing with racist incidents;
 - c) identify and remove racist, antisemitic or discriminatory leaflets, symbols and banners;
 - d) intervene quickly to stop racist behaviour;
 10. invite sports federations and sports clubs:
 - a) to recognise that racism is an important problem in sport at all levels and to demonstrate publicly their commitment to combating it;

- b) to establish internal mechanisms for dealing with cases of racism and racial discrimination;
 - c) to adopt and implement self-regulatory, disciplinary and awareness raising measures;
 - d) to train their security personnel on how to prevent and adequately deal with racist incidents on the sport ground;
 - e) to refuse access to sport grounds to persons who distribute or carry with them racist, antisemitic or discriminatory leaflets, symbols or banners;
 - f) to support movements and initiatives to promote sportsmanship and tolerance, as well as educational and social projects in this field;
11. remind athletes and coaches:
- a) to abstain from racist behaviour in all circumstances;
 - b) to report racist behaviour when it occurs;
12. remind referees:
- a) to react appropriately where athletes, technical staff and/or supporters engage in racist gestures or expressions by imposing adequate measures and sanctions;
 - b) to mention in the referee report the occurrence of racist incidents during a sporting event;
13. encourage supporters' organisations:
- a) to adopt supporters' charters, containing anti-racism clauses;
 - b) to organise activities to attract members from minority backgrounds;
 - c) to be vigilant about possible racist content on their websites and fanzines;
14. encourage political actors and opinion leaders to take a firm public stance against racism in sport;
15. encourage the media:
- a) to abstain from reproducing racist stereotypes in their reporting;
 - b) to pay the necessary attention to the image that they convey of minority groups in sports;
 - c) to report on racist incidents taking place during sport events and to give publicity to sanctions incurred by racist offenders;
16. encourage sponsors and the advertising industry:
- a) to avoid giving a stereotyped picture of athletes from minority backgrounds;
 - b) to avoid discriminating against athletes from minority backgrounds;

III. Build a coalition against racism in sport, and to this end:

17. promote cooperation between all relevant actors through:
 - a) the establishment and promotion of consultation mechanisms;
 - b) the adoption of a national framework agreement, outlining the tasks and responsibilities of each actor;
18. promote exchanges of good practices, through:
 - a) the creation of a good practice award for combating racism and racial discrimination in sport;
 - b) the mandating of the national anti-discrimination body with the creation of a database of good practices on combating racism and racial discrimination in the field of sport;
19. provide funding for social, educational and information activities for non-governmental organisations active in the field of combating racism and racial discrimination in sport.

EXPLANATORY MEMORANDUM TO ECRI GENERAL POLICY RECOMMENDATION No. 12 ON COMBATING RACISM AND RACIAL DISCRIMINATION IN THE FIELD OF SPORT

Introduction

1. This General Policy Recommendation (hereafter: the Recommendation) focuses on combating racism and racial discrimination in the field of sport. It is intended to cover all types of sport, including professional and amateur sports, individual and team sports, as well as all activities related to sport in and outside sports grounds.
2. For the purpose of this Recommendation, ECRI uses the definition of sport as contained in the revised European Sports Charter¹, according to which:
"Sport" means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.
3. Sport can be a powerful tool for promoting social cohesion and for transmitting important values, such as fair play, mutual respect and tolerance, but sometimes it is also an area in which racism and racial discrimination can thrive, thereby perverting these very values.
4. In its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, ECRI defines racism as follows:
"Racism" shall mean the belief that a ground such as race², colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons".
5. In line with its mandate, ECRI concentrates in this Recommendation on instances of intolerance and discrimination on the grounds of race, colour, language, religion, nationality or national or ethnic origin. However, ECRI is aware that intolerance and discrimination in the field of sport also occurs on other grounds or a combination of different grounds, including gender or sexual orientation. Attention should be drawn to the fact that many of the recommendations contained in this text could be applied *mutatis mutandis* to these other grounds.
6. In the framework of its country monitoring work, ECRI has observed that racism and racial discrimination in sports manifest themselves in many different forms, and that usually only the crudest forms of racial abuse in the most popular sport disciplines come to the attention of the general public. Besides, there is also a

¹ Recommendation No.R(92)13 REV on the Revised European Sport Charter, adopted by the Committee of Ministers of the Council of Europe on 24 September 1992 and revised on 16 May 2001.

² "Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the legislation".

tendency to trivialise racist acts taking place during sporting events. Therefore, this Recommendation draws also attention to more hidden forms of racism and racial discrimination in sports and provides concrete examples of unacceptable practices and behaviour³. There is also persuasive evidence that racism and racial discrimination in sport goes beyond the individual or collective behaviour of fans or isolated cases of racist gestures and remarks made, for example, by athletes, coaches or club managers. In fact, institutional racism⁴ is also at work in the field of sport. Therefore, this Recommendation also emphasises the question of how to ensure equal opportunities in access to sports for all persons, irrespective of their race, colour, language, religion, nationality or national or ethnic origin.

7. In accordance with ECRI's mandate, this Recommendation is addressed to the governments of all Council of Europe member States, who are responsible for establishing an effective legal and political framework for combating racism and racial discrimination in society in general and in the field of sport in particular. It is their duty to ensure that all the relevant actors in this field, including public authorities and bodies (among others, the legislator, the judiciary, human rights institutions, including national anti-discrimination bodies, the police, governmental bodies responsible for sport, educational institutions and local authorities) and non-governmental organisations (among others, professional and amateur sports federations, sports clubs, local sports associations, athletes' unions, coaching associations, referee unions, supporters' organisations, sponsors and the media) take effective action against racism and racial discrimination in the field of sport.

I. Ensure equal opportunities in access to sport for all, and to this end:

Paragraph 1 of the Recommendation:

"To gather information on the situation and representation of minority groups in sports, including the collection of good practices in this field."

8. It is important to note that minority groups are well or even over-represented as athletes in certain sport disciplines, while they are usually under-represented among management, administrative and coaching staff. This seems to be partly due to racist stereotypes concerning the sporting capacity and professional competence of athletes of minority background. Furthermore, athletes of minority background sometimes have problems to advance in their careers, because it is difficult for them to gain access to informal networks essentially composed of members of the majority population.
9. In its country monitoring work ECRI is, however, confronted with the fact that in most countries and for most sport disciplines reliable information on the situation and representation of minority groups in sports is not available. This makes it very difficult for governments to devise adequate legal and policy responses for ensuring equal opportunities in access to sport for all members of society. Therefore, ECRI encourages the commissioning of research in the following areas:

³ See paragraphs 12, 27 and 40 of the Explanatory memorandum.

⁴ According to the Stephen Lawrence Inquiry Report by Sir William Macpherson of Cluny 'institutional racism' is "the collective failure of a [public] organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

- Research on the conditions of entry/access to the organised practice of sport and physical activity and on the representation of minority groups in different sport disciplines;
 - Research on the career development of athletes from minority backgrounds;
 - Qualitative and quantitative surveys on the situation of sport managers from minority backgrounds;
 - Socio-demographic analyses of the general public following sporting events.
10. The necessary quantitative data for this kind of research is often, however, not easily obtained. This is due to the fact that a vast majority of the member States of the Council of Europe do not collect data broken down by grounds such as national or ethnic origin, language, religion and nationality. This is why ECRI consistently recommends in its country monitoring reports 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. ECRI stresses that these areas should include sport.
11. In addition, special efforts should be made to identify existing good practices for promoting equal opportunities in access to sport, with a view to implementing them on a large scale.

Paragraph 2 of the Recommendation:

“To conceive adequate legal and policy measures”

12. On the basis of the collected information, ECRI calls on governments to develop and adopt adequate legal and policy measures to ensure equal opportunities in access to sport, among which the adoption of a comprehensive body of anti-discrimination legislation should have a prominent place. ECRI's General Policy Recommendation No.7 provides valuable guidance in this respect and gives a definition of direct and indirect racial discrimination. In addition to providing these definitions, it enumerates the key elements that effective anti-discrimination legislation should contain, including a prohibition of discrimination in all areas of life in both the public and the private sector and the possibility of adopting temporary special measures for members of disadvantaged groups.
13. The prohibition of racial discrimination should cover the conditions of admission to a sports club; the scouting and recruitment of athletes; the recruitment of management, administrative and coaching staff; and the career development of athletes and management, administrative and coaching staff. The prohibition of racial discrimination should apply to both amateur and professional sports. It is also important to be vigilant against trafficking and exploitation, in particular of young athletes.
14. In order to actively counter any racist and discriminatory practices in access to sport, ECRI recommends that member States promote the adoption of equal opportunity policies among sport governing bodies and sport organisations. Public authorities with responsibilities in the field of sport (e.g. sport ministries, educational institutions, local authorities) should be placed under a public duty to promote equality, including in access to sport. Private sporting organisations should be assisted in the development of equal opportunity policies by providing

them with guidelines and information on best practices in this field, which could be, for example, developed and collected by national anti-discrimination bodies⁵.

15. Physical education at school should be used both to raise children's interest in sport and to enhance their awareness of racism and racial discrimination in all its manifestations. This can be achieved, for example, by emphasising the importance of promoting tolerance and non-discrimination in physical education curricula or by encouraging sport teachers and coaches to promote the inclusion of children of minority background.
16. In some countries there exist a certain number of legal and administrative barriers to the participation of non-citizens in local and national sports competitions. As a result, both professional and amateur sports clubs are sometimes reluctant to admit persons who do not possess the citizenship of the country concerned. ECRI is concerned that this can cause problems for young immigrants, whose feelings of rejection might seriously hamper their integration into the host society.
17. Sport can be a powerful tool for promoting integration, ECRI therefore encourages governments to adopt integration programmes with a sport dimension. Special emphasis should be placed on involving children from minority backgrounds in sport activities, both at school and at professional and amateur sports clubs. As regards in particular team sports, ECRI favours mixed teams rather than teams that are composed of only one particular group in order to prevent exclusion and segregation.

Paragraph 3 of the Recommendation:

The role of local authorities in ensuring equal opportunities in access to sport

18. The closeness of local authorities to their community gives them a key role to play in ensuring equal opportunities in access to sport. Promoting equality in sport can naturally complement their efforts to promote social and cultural integration in their community.
19. Local authorities are best placed to identify the problems and needs of minority groups and to encourage and support them in participating in sport. For this they have to establish close links with minority groups by consulting them on a regular basis and inviting them to take part in the work of local sport councils. Existing barriers to the participation of minority groups in sport should be addressed in this framework.
20. In addition to ensuring the participation of minority groups in formal consultation mechanisms, local authorities should seek dialogue and partnership with a wider range of actors, including sports clubs, migrant associations, minority organisations and minority media. Ideally, this involvement should lead to concrete grass-root level projects promoting the participation of minority groups in sport.
21. More specifically, local authorities should promote and develop the practice of sport in areas where there exist tensions within the community. This can be achieved, for example, by improving the availability and attractiveness of sport

⁵ The tasks and responsibilities of national anti-discrimination bodies are described in more detail in paragraph 47 of the Explanatory Memorandum.

facilities in the concerned neighbourhood and promoting the mixing of people from different backgrounds at sporting events.

22. Local authorities also have an important role to play in advising and supporting local sports partners and clubs on how to devise and implement equal opportunity programmes, including by offering equality training for their staff and providing them with information on recruitment programmes inclusive of minority groups.
23. Local authorities should also organise sportive and cultural events, which should bring together people of different ethnic backgrounds, as well as raise their interest in practising sports.

Paragraph 4 of the Recommendation:

The role of sports federations and sports clubs in ensuring equal opportunities in access to sport

24. Sports federations and clubs can have an important role-model function, if they show a real commitment to combating racism and ensuring equal opportunities in access within their own ranks. In practice, they shape to a great extent the conditions under which sport is practiced. They recruit athletes and other sport staff and closely accompany them during their whole professional or amateur career. It is therefore of utmost importance that sports federations and clubs adopt diversity and equal opportunity policies in their statutes and rules, which should not only stay at the level of intent, but also translate into concrete action.
25. Measures to be adopted in this respect should include to inform sport scouts and recruitment agencies of the organisation's diversity and equal opportunity policy; to ensure that recruitment panels maintain - as far as possible - an ethnic balance; to provide regular equality training to their staff; to give their diversity and equal opportunity policy a prominent place in their staff hand books; to provide special training for sport staff from minority backgrounds under-represented in their sport discipline; to provide mentoring support for individuals from minority backgrounds; and to allocate and/or apply for grants to develop and organise activities with minority groups.
26. At the same time sports federations and clubs should also encourage more diversity among spectators and supporters. In certain sport disciplines the discrepancy between the high number of athletes from minority background and the lack of minorities among the audience is striking and ECRI therefore encourages the adoption of measures to attract supporters from different minority backgrounds to sports events.

II. Combat racism and racial discrimination in sport, and to this end:

Paragraph 5 of the Recommendation:

"Ensure that general and specific legislation against racism and racial discrimination in sport is in place"

27. Most Council of Europe member States possess legal provisions against racism and racial discrimination. These legal provisions usually take the form of general anti-discrimination clauses in constitutional texts or are part of a body of anti-discrimination law or another legal text covering many fields of life. However, these provisions are not always enough for successfully combating racism and

racial discrimination in sport, because the relevant actors are often not aware of their existence and do not know how they are relevant for their daily work. Therefore, it is important to have, as necessary, special provisions against racism and racial discrimination in all the relevant sport regulations and laws.

28. Most importantly, the law must provide a clear definition of racism and racial discrimination that should apply in the field of sport. Specific forms of racism and racial discrimination in sport should also, as necessary, be prohibited by the relevant sport regulations and laws. The definitions contained in ECRI's General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination should apply in this respect. These definitions are in line with the case law of the European Court of Human Rights, according to which discrimination is differential treatment which has no objective and reasonable justification. Applied to the field of sport, behaviour to be prohibited should therefore include unjustified differential treatment in remuneration, employment conditions and career development, "stacking" (discriminatory practice in team sports, having the practical effect that athletes from minority background are rarely found in outcome or control positions of the game) and discrimination in the selection and nomination for sports competitions⁶
29. These kinds of cases of racial discrimination in sport usually receive limited attention by national legal and policy makers and ECRI therefore wants to draw their attention to these phenomena. This lack of attention is to some extent due to the fact that comprehensive research on racial discrimination in sport is lacking in most Council of Europe member States.
30. The situation is slightly different as regards incidents of racist violence and racist expression at sporting events, which in more recent times have received more attention, in particular in football. In this context, ECRI wants to draw attention to the fact that racism is also present in other sport disciplines, but that awareness of these issues is still under-developed among many of them. This is especially true for amateur sports, but also for professional sports in the lower leagues.
31. Where these problems have been addressed, initiatives for combating racism in sport have often mainly concentrated on fan behaviour and more in particular on hooliganism, even if not all hooligans or members of radical fan groups are necessarily racist. It is important to acknowledge that racist acts are also perpetrated by athletes, coaches and other sport staff, as well as ordinary fans. However, special attention must be given to the activities of extremist Neo-Nazi and right-wing groups, which sometimes use sporting events for recruiting new members.
32. As regards racist behaviour on the part of fans that are not part of organised groups ECRI has observed a certain reluctance to intervene on the part of the police and other security personnel, including stewards. In fact, a certain impunity seems to reign as regards racist expression on many sports grounds. ECRI is deeply worried about this, as it sends a negative message to society as a whole and risks rendering racism in sport and therefore also racism in general, banal and normal. ECRI, therefore, categorically rejects any attempt to justify or trivialise such acts on the pretext that the events at which they occur are highly

⁶ *Discrimination in access to sport is dealt with in paragraph 2 of this Recommendation.*

emotional. It must be clear that “What is illegal outside the stadium is also illegal inside the stadium”.

33. Therefore, ECRI would like to draw the attention of governments to the guidelines contained in its General Policy Recommendation No.7. In this document ECRI recommends to governments that the law should penalise the following acts when committed intentionally:

- a) public incitement to violence, hatred or discrimination,
- b) public insults and defamation or
- c) threats
against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;
- d) the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;
- e) the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes;
- f) the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material containing manifestations covered by paragraphs 33 a), b), c), d) and e);
- g) the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities with the intention of contributing to the offences covered by paragraph 33 a), b), c), d), e) and f);
- h) racial discrimination in the exercise of one's public office or occupation.

34. ECRI is aware that the law might not prevent the dissemination of racist ideas in more hidden, insidious ways in and around sports grounds. However, ECRI is of the opinion that special training for the police and other security personnel, including stewards, will help them to identify and to combat more encoded forms of racism as well.

35. In some popular sport disciplines, spectator violence poses a serious problem. ECRI strongly supports instruments and cooperation mechanisms that have been developed to counter violence at sports events, such as the European Convention on Spectator Violence and Misbehaviour at Sports Events⁷ and its Standing Committee, since these valuable instruments can also be used to counter racially

⁷ *European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches - European Treaties Series No.120, adopted by the Committee of Ministers of the Council of Europe on 19 August 1985.*

motivated violence on the sports ground. However, a clear distinction should always be drawn between violent behaviour which is motivated by racism and that which is not. This distinction is important, because ECRI considers that for all criminal offences committed in the field of sport the racist motivation should constitute an aggravating circumstance in legal proceedings.

36. Apart from the sports ground, there is another forum in which sport-related racism can thrive, namely the internet. ECRI therefore recommends that legislation should also cover racist crimes committed via the internet. ECRI's General Policy Recommendation No.6⁸ and the Additional Protocol to the Convention on cybercrime⁹ provide very valuable guidance in this respect.
37. ECRI considers that the existence of effective remedies for victims of racism and racial discrimination in sport is of central significance. These should include civil and penal remedies before the courts, but also the possibility of lodging complaints with disciplinary boards or commissions of sport governing bodies or with national anti-discrimination bodies. Sanctions and penalties imposed as a result of such proceedings should have a sufficiently deterrent effect, as well as have an educational dimension.
38. In this context, ECRI would also like to stress that sports organisations and clubs, as well as sports ground owners and public authorities have a special responsibility in keeping the sport environment free from racism and racial discrimination. The legislator should therefore foresee sanctions and/or other appropriate means, if they do not take the necessary measures for preventing and controlling racist violence or misbehaviour during and in relation to sporting events.
39. An effective means for preventing and controlling such behaviour is the installation of audio-visual video cameras and CCTV systems (Closed Circuit Television) on the sports ground. Security regulations should therefore foresee their possible use for documenting racist abuse.

Paragraph 6 of the Recommendation:

"To ensure that legislation aimed at preventing and sanctioning racist offences in the field of sport is effectively implemented."

40. Comprehensive legislation against racism and racial discrimination is important, but remains a dead letter, if not effectively implemented.
41. Laws and regulations in the field of sport should therefore contain clear and comprehensive guidelines on how to recognise racist acts. According to ECRI, racist behaviour to be prohibited includes racist insults and chanting, the flaunting of racist banners and symbols and the wearing, distribution and selling of racist, antisemitic and discriminatory banners, symbols, flags, leaflets or images.

⁸ ECRI General Policy Recommendation No.6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet.

⁹ Additional Protocol to the Convention on cybercrime concerning criminalisation of acts of a racist or xenophobic nature committed through computer systems, European Treaties Series No. 189, adopted by the Committee of Ministers of the Council of Europe on 28 January 2003.

42. At the same time, rules and regulations in the field of sport should foresee the establishment of mechanisms for reporting and dealing with racist incidents during and in relation to sporting events. For example, special protocols could be adopted, laying down the exact responsibilities of referees, security officers, stewards and the police when racist incidents occur.
43. As already mentioned in other parts of this Recommendation, there is no comprehensive information on the number of racist incidents in the field of sport. This lack of information concerns all sport disciplines in almost all Council of Europe member States. This makes it very difficult to get a real picture of the situation. Racism monitoring systems in line with national legal requirements have therefore to be put into place, which should be operated by the law enforcement authorities, for example, in cooperation with sport organisations, clubs and specialised NGOs.
44. In order to ensure an effective recording and monitoring of racist incidents and that police investigations are carried out in a thorough and satisfactory manner and law enforcement officers do not overlook the racist motivation of ordinary offences, ECRI advocates a broad definition of “racist incident”, as contained in its General Policy Recommendation No.11, that is “*any incident which is perceived to be racist by the victim or any other person*”¹⁰.
45. A racist incident must be strictly distinguished from a racist offence and may only serve as a starting point for further investigations by the concerned law enforcement authorities.
46. The follow-up given to acts of racism and racial discrimination in the field of sport can further be improved by offering targeted training to all persons involved in the justice system, including the police, prosecutors and judges with a view to increasing their knowledge about racism in sport and how such acts can be effectively prosecuted. This training should also include measures to encourage victims of racist acts to come forward with complaints.
47. National anti-discrimination bodies, as described by ECRI in its General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level can also play a very important role. Depending on their mandate, they may provide victims with information about their rights, give them legal advice, carry out investigations, negotiate settlements and conduct mediation, take formal decisions or assist them in ordinary court proceedings.

Paragraph 7 of the Recommendation:

“To organise and finance anti-racism awareness raising campaigns”

48. One of the major problems for combating racism and racial discrimination in sport is the lack of awareness of the existence of these phenomena and of their seriousness. In fact, there are only a few countries and a few sport disciplines, where this problem is acknowledged and addressed and even where it is done, awareness-raising measures mainly address racist fan behaviour. ECRI is, in contrast, convinced that anti-racism campaigns should be devised to address all

¹⁰ This definition contained in General Policy Recommendation No.11 is drawn from the 1999 Stephen Lawrence Inquiry Report by Sir William Macpherson of Cluny (Cm 4262, Chapter 47, paragraph 12).

the different forms of racism and racial discrimination in sport, as described in previous parts of this Recommendation.

49. Governments should either organise or coordinate such awareness-raising campaigns themselves or provide sufficient funding for them to be carried out by other relevant actors in this field, including by international sports federations, European organisations, national sports federations and clubs, educational institutions, national anti-discrimination bodies, minority organisations and anti-racism NGOs.

Paragraph 8 of the Recommendation:

Local authorities

50. Local authorities should adopt equality or anti-racism action plans, setting out a strategy and concrete measures for integrating the fight against racism and racial discrimination in all their activities.
51. As regards the field of sport, concrete measures should be first discussed within the local bodies dealing with sport, bringing together the relevant politicians, civil servants, sports organisations, sports clubs, sporting ground owners, as well as civil society representatives, including minority groups.
52. Special emphasis should be placed on encouraging and supporting movements and initiatives to promote tolerance and sportsmanship, as well as educational and social projects.
53. Local authorities have also the responsibility to ensure that the local police force receives adequate training in dealing with racist incidents in and around sporting grounds.

Paragraph 9 of the Recommendation:

Police

54. The police play a vital role in preventing and responding to racist incidents both in and outside sporting grounds. Police officers therefore have to receive regular training on how best to deal with racist incidents and how to identify their perpetrators.
55. In order to successfully prevent and respond to racist incidents related to sporting events, the police have to work in close cooperation with the security personnel of the organisers of such events. The practical terms of this cooperation could be laid down in special agreements between the police and the organisers.
56. In addition, the police should assist the organisers of sporting events in the fight against racism and racial discrimination by providing them in advance with any relevant security related information, collecting the necessary evidence and identifying the perpetrators of racist acts and putting racist incidents on the police record.

Paragraph 10 of the Recommendation:

Sports federations and sports clubs

57. In the framework of its country monitoring, ECRI has observed a certain attitude of denial on the part of certain sports federations and clubs as regards the existence of racism and racial discrimination in their particular sport discipline.

There are of course notable exceptions, but the average level of public commitment to combating these phenomena is rather low among these key actors in the field of sport. This has a variety of reasons, among which fears to destroy the positive image of sport play a considerable role. ECRI can understand these fears, but would like to point out that - if unaddressed - racism is able to fully develop its corrupting power, thereby tainting sport's image and undermining its very values.

58. Sports federations and clubs should therefore take a preventive approach to countering this dangerous phenomenon, including by establishing internal mechanisms for dealing with cases of racism and racial discrimination and by adopting and implementing self-regulatory, disciplinary and awareness raising measures.
59. As regards internal mechanisms for dealing with cases of racism and racial discrimination, sports federations and clubs should nominate a person responsible for combating racism and racial discrimination within their own internal structures. Furthermore, they should develop procedures and enter into agreements to foster the exchange of information concerning racist incidents.
60. As regards self-regulatory measures, sports clubs and federations should include anti-racism and equality clauses in their statutory regulations. They should produce codes of conduct clearly stating their commitment to promoting equality and tackling discrimination and distribute it to all their staff, volunteers, coaches and sport officials. They should organise regular trainings and awareness-raising sessions for their key staff, volunteers, coaches and sport officials. In addition, they should provide coaches and referees with clear guidelines as to how to deal with racist and discriminatory behaviour.
61. As regards disciplinary measures, they should expel racist offenders from stadiums, cancel their season ticket, pronounce stadium bans on persistent offenders and inform the police. In serious cases of racism committed by athletes, coaches or fans, referees should be able to discontinue sporting events and sports federations should be able to impose fines or withdraw points from the concerned athlete or sport club and/or to decide that future sports competitions are held behind closed doors.
62. As regards awareness raising measures, sports clubs and federations should publish announcements in sports competition programmes that they do not tolerate racism, condemn racist chanting and the displaying of extreme right symbols and salutes, and will take appropriate action. Furthermore, they should make regular stadium announcements against racism and xenophobia on the scoreboard and by the stadium speaker, display anti-racism banners during sport events and, if possible, organise special anti-racism days. Finally, they should integrate the anti-racist message in their communication strategy (e.g. websites, game programmes, fan magazines, billboards).
63. In addition to these self-regulatory, disciplinary and awareness raising measures, they should train their security personnel, including stewards how to prevent and adequately deal with racist incidents on the sporting ground. Part of this training should also be how to recognise racist behaviour, including more coded forms of racism (e.g. Neo-Nazi symbols).

64. The security personnel should be instructed to refuse access to the sporting ground to persons, who display or carry with them racist, antisemitic or discriminatory leaflets, symbols or banners. They also have to prevent the distribution and sale of racist material on or near the sporting ground.
65. Finally, information on racist incidents during sport events should be brought to the attention of the head of security and/or the police, which should give these incidents an appropriate follow-up and draw up an inventory of racist incidents for each sporting event.

Paragraph 11 of the Recommendation:

Athletes and coaches

66. Athletes and coaches often stand in the limelight of public attention. They are role models for young and old and they should therefore abstain from racist behaviour in all circumstances. At the same time, they should also report such behaviour when it occurs and bring it to the attention of sport governing bodies so that proper action can be taken.
67. In this context ECRI would like to acknowledge and welcome the personal commitment of certain athletes to combating racism and racial discrimination in the field of sport.

Paragraph 12 of the Recommendation:

Referees

68. Referees have special responsibilities, when racist incidents occur on the sporting ground. It is their duty to protect athletes from racist abuse on the sporting ground during competitions. In order to be able to react appropriately when athletes and/or supporters engage in racist gestures or expressions, they have to be able to identify racist behaviour as described in paragraph 40 of this Explanatory Memorandum. For this they should follow a special training course to improve their knowledge of the problem of racism and racial discrimination. Furthermore, they should be familiar with the anti-racism and equal opportunity policies of the relevant sports governing bodies and clubs involved in a particular competition.
69. In the event of a racist or discriminatory incident, the referee has to react promptly and take all the necessary steps to put an end to these occurrences. As regards more particularly racist shouting or chanting by spectators during a sporting event, a circular of the Belgian Directorate General for Security and Prevention Policy¹¹ provides very valuable guidance and requests referees to respond in the following manner to such incidents:
- a. they should summon the two captains of the team;
 - b. they should inform them of their intention to make an appeal via the stadium speaker;
 - c. they should ask the captains for their help to calm down the spectators;

¹¹ *Circulaire OOP 40 du 14 décembre 2006 portant des directives à l'encontre des propos et slogans blessants, racistes et discriminatoires scandés en chœur à l'occasion des matches de football.*

- d. they should summon the persons responsible for the sporting ground and ask them to appeal to the spectators via the stadium speaker;
- e. they should take the decision to resume the game.

If despite these measures the behaviour is repeated, the Circular foresees that referees should proceed in the following manner:

- a. they should take the decision to momentarily interrupt the game;
- b. they should ask the teams to go to their dressing rooms;
- c. they should ask the persons responsible for the sporting ground to make a last appeal via the stadium speaker;
- d. they should resume the game after ten minutes;
- e. they should definitely stop the match if the behaviour is repeated, despite a first momentary interruption and after consultation with the security personnel and the police.

70. The referee has also to impose adequate sanctions for racist incidents taking place between athletes. For example, in football by showing the offending player the yellow or red card.

71. All racist incidents and referees' responses to them should be mentioned in the referee reports. These reports, which are usually centralised at the corresponding referee unions, should be also used to monitor racist incidents on the sporting ground.

Paragraph 13 of the Recommendation:

Supporters' organisations

72. Sport organisations and clubs should highly value contacts with their fans. Their love and enthusiasm for sport makes many sporting events a unique experience, but it must not be forgotten that some fans also show racist behaviour at such occasions. An effective means for countering such behaviour is to include anti-racism clauses in supporters' charters, which set out the club's obligations to its supporters and the supporters' obligations towards the club and clearly define each party's rights and duties.

73. In this context, supporters' organisations should be encouraged to take measures to also attract members from minority backgrounds and to be vigilant about possible racist content on their websites and fanzines.

74. Finally, their internal rules should also foresee procedures for excluding members from their organisation, who have engaged in racist or discriminatory acts.

Paragraph 14 of the Recommendation:

Political actors and opinion leaders

75. ECRI also considers it very important that political actors and opinion leaders take a firm public stance against racism in sports. In particular, ECRI would like to remind politicians that they should not try to trivialise the problem or even try to make electoral gains by making racist remarks about minority groups.

Paragraph 15 of the Recommendation:

The media

76. The media have a unique position in society and have an important influence on people's attitudes. Media representations of the different groups in society, the way journalists portray relationships between these groups and the way in which they report on events, may, in some cases, fuel stereotypes and prejudices. This is particularly true for the field of sport.
77. National authorities should therefore encourage the media, without encroaching on their editorial independence, to pay attention to the image that they convey of minority groups in the field of sport.
78. In particular, the media should avoid reporting on athlete or crowd behaviour in a manner which could foster confrontation. At the same time, sport journalists should pay special attention to avoid stirring up xenophobic or racist sentiments in their on-the-spot commentaries.
79. ECRI is aware that the media can play a very positive role in combating racism in sport, for example, when they draw attention to the occurrence of racist incidents on sports grounds, put them into the right context and later on also give publicity to the sanctions incurred by racist offenders. ECRI acknowledges and welcomes the positive role that certain media and journalists play in the fight against racism and racial discrimination in the field of sport.

Paragraph 16 of the Recommendation:

Sponsors and advertising industry

80. ECRI is concerned about the sometimes very stereotyped picture that is given of athletes from minority backgrounds in the advertising industry. There is also some evidence that athletes from minority backgrounds sometimes attract less interest from sponsors and/ or close sponsorship deals which are less advantageous than that of their counterparts from the majority population.

III. Build a coalition against racism in sport, and to this end:

Paragraph 17 of the Recommendation

"To promote cooperation between all relevant actors"

81. Governments should promote the cooperation between all relevant actors in this field, including ministries of education and sport, national and international sports federations, sports clubs, athletes, sports coaching and referees' unions, supporters' organisations, local authorities, educational institutions, national anti-discrimination bodies, minority organisations, sports and anti-racism NGOs, sponsors and the media.
82. In fact, in some Council of Europe member States national action plans to promote tolerance and fair play and to eliminate discrimination have been already adopted for this purpose. ECRI welcomes such efforts and appeals to other member States to follow their example.

83. These action plans should be accompanied by national framework agreements, outlining the responsibilities and tasks of each cooperation partner. Such agreements give their commitment to combating racism and racial discrimination a more binding character and also secure funding for anti-racism projects in the longer-term.

Paragraph 18 of the Recommendation

“To promote the exchange of good practices”

84. Special emphasis should be placed on the promotion of the exchange of good practices in the field of sport. Measures to be adopted in this context include the creation of a good practice award for combating racism and racial discrimination in sports, which could be organised, for example, by international or national sports federations with the financial support of governments and/or private sponsors.

85. ECRI would also like to draw the attention of governments to the fact that national anti-discrimination bodies are often best placed to creating and maintaining a database of good practices on combating racism and racial discrimination in the field of sport.

Paragraph 19 of the Recommendation

“To provide funding for social, educational and information activities”

86. ECRI has also observed that there is a great problem of under-funding for initiatives aimed at combating racism and racial discrimination in the field of sport. As outlined in other parts of this Recommendation, there is a wide range of measures to be taken in this field and all of them need a sustained financial commitment on the part of governments.



**ECRI General Policy
Recommendation No.13:
Combating anti-gypsyism
and discrimination against Roma**

Adopted on 24 June 2011

The European Commission against Racism and Intolerance (ECRI):

Having regard to the European Convention on Human Rights;

Having regard to Recommendation CM/Rec(2009)4 of the Committee of Ministers to member states on the education of Roma and Travellers in Europe (adopted on 17 June 2009);

Having regard to Recommendation CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe (adopted on 20 February 2008);

Having regard to Recommendation Rec(2006)10 of the Committee of Ministers to member states on better access to health care for Roma and Travellers in Europe (adopted on 12 July 2006);

Having regard to Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe (adopted on 23 February 2005);

Having regard to Recommendation Rec(2004)14 of the Committee of Ministers to member states on the movement and encampment of Travellers in Europe (adopted on 1 December 2004);

Having regard to Recommendation Rec(2001)17 of the Committee of Ministers to member states on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe (adopted on 27 November 2001);

Bearing in mind the work of the Committee of Experts on Roma and Travellers (MG-S-ROM);

Taking the work of the European Committee of Social Rights into consideration;

Bearing in mind the work of the Advisory Committee on the Framework Convention for the Protection of National Minorities;

Recalling ECRI's General Policy Recommendation No.3 on combating racism and intolerance against Roma/Gypsies, aimed at helping member states to take effective action against the discrimination which they experience;

Recalling ECRI's General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education and its General Policy Recommendation No.11 on combating racism and racial discrimination in policing;

Stressing that in its country-by-country reports, ECRI has regularly recommended for very many years that member states take measures to combat the prejudice, discrimination, violence and social exclusion experienced by Roma and give the Roma identity a real chance of continued existence;

Stressing that over several years, the European Court of Human Rights has developed case-law concerning the discrimination Roma experience in various areas and has regarded them as a particularly disadvantaged and vulnerable minority thus requiring special attention;

Recalling that anti-Gypsyism is a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination;

Stressing that anti-Gypsyism is an especially persistent, violent, recurrent and commonplace form of racism, and convinced of the need to

combat this phenomenon at every level and by every means;

Recalling that discrimination against Roma is chiefly founded on their ethnic origin and lifestyle;

Deeply concerned by the increasing acts of violence inflicted on a large number of Roma, and by the too-frequent impunity that the culprits enjoy;

Recalling that the preservation of the distinctive identity of some Roma communities, to which their members remain attached, is challenged both by economic development and by failed attempts at integration;

Noting that for many Roma citizens of the European Union, the exercise of their right to move freely is hindered by administrative obstacles, and that they are the victims of intolerance and abusive practices;

Acknowledging, however, that many member states have adopted policies aimed on the one hand at improving the situation of Roma in areas such as education, employment, housing, health and culture, and on the other hand at combating the discrimination which they experience, and thus acknowledging the existence of a political will to solve the problems which Roma face;

Considering that local and regional authorities have a particularly important role to play in combating anti-Gypsyism;

Aware moreover of the numerous initiatives taken by the Council of Europe- including those by the Commissioner for Human Rights- the United Nations, the OSCE and the European Union to improve the lot of Roma, and taking note of the outcomes measured by such initiatives;

Observing that in spite of everything, the situation of Roma in most member states remains alarming and that the signs of anti-Gypsyism are continually increasing and worsening;

Noting with concern that the political discourse in many member states tends to stigmatise Roma and to incite hatred towards them;

Anxiously realising that public opinion in many member states remains openly hostile to Roma;

Noting with concern that some media convey a negative image of Roma;

Stressing that to be effective, action to combat anti-Gypsyism requires sufficient human and financial resources;

Considering that measures to aid preservation of the Roma identity constitute one of the instruments for fighting anti-Gypsyism;

Aware that any policy intended to improve the situation of Roma requires not only a long-term investment, but also clear political will, and the involvement of the Roma themselves as well as civil society in general;

Stressing that it is indispensable for the Roma community to realise the role which it must itself perform in combating anti-Gypsyism;

Recalling that Europe derives from its history a duty of remembrance, vigilance and resistance to the rise of racist, xenophobic, antisemitic and intolerant phenomena;

Recalling that the fight against racism, xenophobia, antisemitism and intolerance is an integral part of the protection and promotion of universal and indivisible human rights, standing for the rights of every human being with no distinction whatsoever;

Also observing that the persistent prejudice against Roma leads to discrimination against them in many areas of social and economic life, and that these provide considerable fuel for the process of social exclusion affecting Roma;

And,
stating that, in the present recommendation, the term "Roma" includes not only Roma but also Sinti, Kali, Ashkali, "Egyptians", Manouche and kindred population groups in Europe, together with Travellers, so as to embrace the great diversity of the groups concerned;

Recommends that the governments of member states:

1. if they have not yet done so, ratify Protocol No.12 to the European Convention on Human Rights, as well as the Framework Convention for the Protection of National Minorities;
2. employ, under a national plan, a comprehensive multidisciplinary approach to issues concerning Roma, involving their representatives in the conception, framing, implementation and evaluation of the policies that concern them;
3. enhance mutual trust between Roma and public authorities, in particular by training mediators from, among others, the Roma community;
4. combat anti-Gypsyism in the field of education, and accordingly:
 - a. give the implementation of ECRI's General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education high priority;
 - b. take measures for preventing and combating stereotypes, prejudice and discrimination experienced by Roma children in schools, by making parents of non-Roma children aware of it and by training teaching staff in particular for intercultural education;
 - c. include teaching on the Roma genocide ("Parrajimos") in school curricula;
 - d. take urgent measures, including legal and political ones, to put an end to the segregation at school which Roma children are subjected to, and integrate them into schools attended by pupils from the majority population;
 - e. abolish the too-frequent placement of Roma children in special schools, making sure that Roma pupils not afflicted with mental disorders are spared such placement and that those already placed are speedily enrolled in ordinary schools;
 - f. combat, through sanctions, the harassment inflicted on Roma pupils at school;
 - g. take all appropriate measures to combat absenteeism and dropping-out among Roma children;

- h. carry out actions aimed at increasing Roma parents' awareness of the importance of nursery school, of preventing dropping-out, and of giving priority to their children's education;
- i. eliminate every financial and administrative obstacle to the access of Roma children to education;
- j. ensure that each Roma child has genuine access to nursery school;
- k. recruit school mediators, including among Roma to ensure a liaison between the school and Roma parents;
- l. ensure that a large number of Roma join the teaching profession to aid the school integration of Roma children;
- m. provide Roma pupils in need of it with preparatory and additional instruction in the official language(s);
- n. offer Roma pupils instruction in their mother tongue, upon the parents' request;
- o. take measures to ensure continuous schooling for children from travelling communities;
- p. facilitate access to life-long education for adult Roma desiring it;
- q. ensure that school textbooks do not convey stereotypes on Roma and do contain information on Roma language, culture and history and present the benefits brought by Roma to society;
- r. ensure that cases of discrimination against Roma in the sphere of education are prosecuted and punished;

5. combat anti-Gypsyism in employment, and accordingly:

- a. ensure that national legislation affords genuine protection against discrimination in employment and that it is indeed implemented;
- b. for that purpose, provide adequate training to civil servants;
- c. take positive measures for Roma in respect of employment, as concerns particularly recruitment and vocational training;
- d. promote Roma employment at all levels of the public sector;
- e. take measures to stamp out discrimination against Roma as regards recruitment and career development;
- f. help Roma suffering from discrimination in employment to assert their rights before appropriate civil or administrative bodies;
- g. conduct information and awareness campaigns in the private and public sectors in order to make the relevant legislation known and to improve its implementation as concerns Roma;
- h. remove any obstacles, including bureaucratic, to the exercise of traditional trades;
- i. in consultation with Roma, find alternatives to the vanished trades in which they have traditionally engaged, for instance by offering them

- advantageous loans to set up their own businesses and/or propose tax benefits;
- j. ensure that cases of discrimination against Roma in employment are prosecuted and punished;
- 6. combat anti-Gypsyism as regards housing and the right to respect for the home, and accordingly:**
- a. afford Roma access to decent housing;
- b. combat de facto or forced segregation in respect of housing;
- c. ensure that the provision of new social housing for Roma aids their integration and does not keep them segregated;
- d. ensure that Roma are not evicted without notice and without opportunity for rehousing in decent accommodation;
- e. take steps to legalise the occupation of Roma sites or dwellings built in breach of town planning regulations once the situation has been tolerated for a long period of time by the public authorities;
- f. promote coexistence and mutual understanding between persons from different cultures in neighbourhoods in which Roma and non-Roma live;
- g. combat prejudice and stereotypes concerning Roma and Travellers in respect of access to housing;
- h. combat any act of discrimination against Roma in respect of housing, particularly by ensuring that the legislation, including anti-discrimination legislation, is duly applied;
- i. take effective measures against refusal to enter Roma in the register of inhabitants when they wish to settle permanently or temporarily;
- j. ensure that spatial planning regulations do not systematically impede the traditional life of Travellers;
- k. ensure that appropriate encampment areas, whether for permanent occupation or transit, are available to Travellers in sufficient numbers on suitable and duly serviced sites;
- l. encourage consultation between all local players and Travellers about the positioning of encampment areas destined for them;
- m. ensure that acts of discrimination against Roma in respect of housing are prosecuted and punished;
- 7. combat anti-Gypsyism in health care, and accordingly:**
- a. take measures to secure equal access to all quality health care to Roma;
- b. recruit health mediators, in particular from the Roma community to provide liaison between health personnel and managers and Roma;

- c. take positive measures to ensure that no financial or administrative hindrance impedes the access of Roma to health care and medical treatment;
- d. provide training to health workers aimed at combating stereotypes, prejudice and discrimination against Roma;
- e. ensure that acts of discrimination against Roma in the health sector are prosecuted and punished;
- f. expressly prohibit any practice of forced sterilisation of Roma women;
- g. prevent and combat any segregation in hospitals and in particular in maternity wards;

8. combat racist violence and crimes against Roma, and accordingly:

- a. pay particular attention to the implementation of ECRI's General Policy Recommendation No.11 on combating racism and racial discrimination in policing, especially Chapter III thereof on the role of the police in combating racist offences and following up racist incidents;
- b. set up a comprehensive system for recording acts of violence against Roma;
- c. take steps to encourage Roma victims of racist violence and crimes to lodge complaints, in particular by making them aware of the adequate bodies and by ensuring that if need be they receive the necessary assistance;
- d. give the police, prosecuting authorities and judges special training concerning the legislation punishing racist crimes and its implementation as concerns Roma victims;
- e. ensure that the police and the prosecuting authorities conduct the requisite investigations of racist crimes and acts of violence against Roma so that the culprits do not go unpunished;

9. combat manifestations of anti-Gypsyism likely to come from the police, and accordingly:

- a. pay particular attention to the implementation of ECRI's Recommendation No.11 on combating racism and racial discrimination in policing;
- b. encourage Roma who are victims of misconduct by the police to lodge complaints, offering them the necessary support;
- c. ensure that investigations are conducted where there are allegations of police misconduct towards Roma, and that the perpetrators are prosecuted and punished;
- d. train the police in human rights and relevant legislation, particularly in order to improve their relations with Roma communities;
- e. raise police awareness of the problems Roma face and give them training about the problems that affect Roma, particularly violence

- and racist crimes, in order to better prevent and combat these phenomena;
- f. take measures to promote Roma recruitment to the police force by conducting, to that end, information campaigns in Roma communities;
 - g. ensure that Roma enjoy equal opportunities for career development within the police;
 - h. recruit and train adequate numbers of mediators, in particular from the Roma population in order to ensure a liaison between Roma and the police;
 - i. ensure, in accordance with paragraph 10 of ECRI's General Policy Recommendation No.11, the creation of an independent body for investigating complaints made against the police, particularly by Roma;
- 10. combat anti-Gypsyism expressed in the media while acknowledging the principle of their editorial independence, and accordingly:**
- a. ensure that the legislation is indeed applied to those media that incite discrimination, hatred or violence against Roma;
 - b. encourage the media not to mention the ethnic origin of a person named in articles or reports when it is not essential for a good understanding of events;
 - c. encourage the media to adopt a code of conduct for preventing, inter alia, any presentation of information that conveys prejudice or might incite discrimination, hatred or violence against Roma;
 - d. encourage the media to refrain from broadcasting any information likely to fuel discrimination and intolerance towards Roma;
 - e. support all initiatives taken to impress the dangers of anti-Gypsyism upon media professionals and their organisations;
 - f. encourage the professional bodies of the media to offer journalists specific training on questions relating to Roma and anti-Gypsyism;
 - g. promote the participation of Roma in the media sector in general by taking steps for journalists and presenters from among Roma communities to be recruited and trained;
- 11. combat anti-Gypsyism as regards access to places open to the public, and accordingly:**
- a. ensure that the anti-discrimination legislation is applied to the owners or persons in charge of a place open to the public who deny entry to Roma;
 - b. take measures to encourage private security firms to raise their personnel's awareness and to train them in order to avoid any discriminatory attitude and behaviour towards Roma;

- 12. combat anti-Gypsyism as regards access to public services, and accordingly:**
 - a. ensure that Roma have access to social welfare allowances on the same terms as the rest of the population, and that the legislation against discrimination is applied if necessary;
 - b. ensure that Roma communities concentrated in certain neighbourhoods or villages are not disadvantaged in respect of public services such as water supply, sanitation, electricity, refuse removal, transport, access to the road system and road maintenance;
 - c. offer civil servants training in the prevention of racism and discrimination against Roma and in the relevant legislation;
 - d. encourage Roma to lodge complaints where they consider themselves victims of discrimination on the part of civil servants;
 - e. prosecute and punish civil servants committing discrimination against Roma;
 - f. ensure that Roma enjoy the same type and quality of services as the rest of the population;
- 13. combat anti-Gypsyism in access to goods and services, in particular in the banking and insurance sectors;**
- 14. in order to better measure the problems with the aim of combating them more effectively and to adapt policies to be undertaken, collect statistical data on Roma, in particular in the fields of education, employment, housing and health, by ensuring respect for the principles of confidentiality, voluntary self-identification and informed consent;**
- 15. to condemn all public discourse which publicly incites direct or indirect discrimination, hatred or violence against Roma;**
- 16. to encourage a monitoring system of expressions of anti-Gypsyism on the Internet and ensure effective prosecution, by following the principles set out by the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, and their implementation;**
- 17. in general, in order to combat anti-Gypsyism and discrimination against Roma, ensure:**
 - a. that the name used officially for the various Roma communities is the name by which the community in question wishes to be known;
 - b. the promotion and protection of Roma culture, fostering the rest of the population's better knowledge of Roma communities as well as the advancement of intercultural dialogue;
 - c. the advancement of Roma women and of their rights, and combat the multiple discrimination which they may face ;
 - d. that all Roma children are registered at birth;
 - e. that all Roma are issued identity documents;

- f. that legislation concerning citizenship is not discriminatory towards Roma;
- g. citizenship for Roma to obviate all cases of statelessness;
- h. that the legislation, and its implementation, on the freedom of movement of persons are not discriminatory towards Roma;
- i. adequate political representation enabling Roma to have their voices heard;
- j. access for Roma to legal aid so that they may assert their rights in all eventualities;
- k. the promotion of sport in so far as it promotes respect for diversity and facilitates the integration of Roma.



**ECRI General Policy
Recommendation No.14:**

**Combating racism
and racial discrimination
in employment**

Adopted on 22 June 2012

The European Commission against Racism and Intolerance (ECRI):

Recalling that Article 1 of the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights;

Having regard to the European Convention on Human Rights, in particular its Article 14 which contains a non-discrimination clause concerning the enjoyment of the rights set forth in the Convention and its Protocol No.12 which contains a general clause prohibiting discrimination;

Having regard to the case-law of the European Court of Human Rights;

Having regard to the European Social Charter (revised), in particular its Articles 1, 19 and E;

Having regard to the case law of the European Committee of Social Rights;

Having regard to the Framework Convention for the Protection of National Minorities, in particular its Articles 4 and 15;

Having regard to the work of the Advisory Committee on the Framework Convention for the Protection of National Minorities;

Having regard to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its related instruments;

Having regard to the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

Having regard to the International Convention on the Elimination of all Forms of Racial Discrimination, in particular its Articles 1 and 5;

Having regard to the International Covenant on Economic, Social and Cultural Rights, in particular its Articles 6, 7 and 8;

Having regard to the International Labour Organisation Discrimination Convention (n. 111) and Domestic Workers Convention (n. 189);

Taking into account the Charter of Fundamental Rights of the European Union;

Taking into account Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation;

Recalling that ECRI is entrusted with the task of combating racism, racial discrimination, xenophobia, antisemitism and intolerance in greater Europe from the perspective of the protection of human rights;

Recalling ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance, ECRI's General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, ECRI's General Policy recommendation No.7 on national legislation to combat racism and racial discrimination as well as ECRI's General Policy Recommendation No.13 on combating anti-Gypsyism and discrimination against Roma;

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

Recalling the Committee of Ministers Recommendations Rec(89) 2 on the protection of personal data used for employment purposes, Rec(2001)17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe, Rec(2004) 2 on the access of non-nationals to employment in the public sector and CM/Rec(2008)10 on improving access of migrants and persons of immigrant background to employment;

Having regard to the so called Paris Principles on minimum standards concerning national human rights institutions adopted unanimously by the UN General Assembly in 1993;

Having regard to the UN Refugee Convention Relating to the Status of Refugees of 1951, in particular its Article 3;

Having regard to the rights of minorities to effectively participate in economic life as protected by the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in particular its Article 2(2), and to the UN Human Rights Council recommendations in particular A/HRC/16/46 *“Recommendations of the Forum on Minority Issues at its third session, on minorities and effective participation in economic life”* 14 and 15 December 2010;

Recalling that the fight against racism, racial discrimination, xenophobia, antisemitism and intolerance is an integral part of the protection and promotion of universal and indivisible human rights of every human being with no distinction whatsoever;

Aware of the multiple forms of discrimination against groups of concern to ECRI including on the basis of age, disability, gender, gender identity or sexual orientation, and that ethnic minority, migrant, asylum-seeking and refugee women face

additional barriers in relation to access to, participation and advancement in employment;

Aware that laws alone are not sufficient to eradicate racism and racial discrimination, but convinced that laws are essential in combating racism and racial discrimination in employment;

Stressing that to be effective, action to combat racism and racial discrimination in employment requires sufficient human and financial resources;

Stressing the importance of the role of local and regional authorities in employing and providing services to members of groups of concern to ECRI;

Aware that eliminating racial discrimination, achieving equality in the field of employment and creating an integrated workforce requires member States to collaborate with the social partners, particularly with employers, trade unions and civil society organisations;

Stressing the importance to successful businesses of creating workplace environments where workers are respected and their contributions valued, regardless of their “race”¹, colour, language, religion, nationality or national or ethnic origin;

Emphasising that eliminating racial discrimination and providing equality of access to employment and to promotion can result in the creation of a diverse workforce which offers an unlimited pool of talent to employers and stressing that an inclusive working

¹ Since all human beings belong to the same species, ECRI rejects theories based on the existence of different races. However, in this Recommendation ECRI uses this term “race” in order to ensure that those persons who are generally and erroneously perceived as belonging to another race are not excluded from the protection provided for by the Recommendation.

environment which promotes and respects diversity is of benefit to employers, employees and the whole of society;

Emphasising that the promotion of non-discrimination is a corporate social responsibility and a good marketing tool for employers and that a reputation for discrimination could have a negative impact on a company's profitability;

Emphasising that employing people with the knowledge of the culture, language and networking in the countries of foreign trading partners is of benefit to employers;

Aware that knowledge of the right to equality and to be protected from unlawful discrimination as well as knowledge of the existence of specialised bodies or of complaint mechanisms are low across the Council of Europe member States and that this lack of awareness is more acute among particularly disadvantaged groups;

Stressing the importance of ensuring that individuals who complain of discrimination, or people who provide them with support to complain or who act as witnesses in discrimination cases must be protected from reprisals and are entitled to legal protection against any adverse treatment which may result from their actions;

Recommends that the governments of member States:

1. Take all necessary action to eliminate de jure and de facto racism, racial discrimination and racial harassment on grounds such as "race", colour, language, religion, nationality, or national or ethnic origin (hereafter: racism, racial discrimination and racial harassment) in employment in both the public and private sectors and adopt national law and enforcement mechanisms which ensure the active enforcement of rights and full equality in practice.
2. Adopt, under a national plan, a comprehensive multidisciplinary strategy to promote equality and eliminate and prevent racism, racial discrimination and racial harassment in employment, including strategies for improving the integration of groups of concern to ECRI and their equal participation in employment and economic activity.
3. Take into account the provisions of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive 2000/78/EC in particular:
 - a. the requirements to disseminate information on discrimination law and
 - b. promote dialogue with the social partners with a view to fostering equal treatment.
4. Adopt a national plan for all national government departments, regional and local authorities, and state agencies to enable the social partners and civil society organisations articulating the interests of groups experiencing inequality and disadvantage to be consulted and provide expertise on the most effective methods to promote equality and eliminate racial discrimination and racial harassment in employment.

5. With a view to ensuring full equality in practice, adopt legislation permitting positive action and promote and provide clear guidance on positive action measures in employment which prevent or compensate for disadvantages linked to the enumerated grounds.
6. Ratify Protocol No.12 to the European Convention on Human Rights, the Framework Convention for the Protection of National Minorities, the European Social Charter (Revised) (accepting the system of collective complaints), the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as well as the International Labour Organisation Convention Concerning Decent Work for Domestic Workers.

1) LEGAL REVIEW

Ensure that national legislation affords genuine protection against direct and indirect discrimination in employment and that it is implemented in practice, *inter alia* through encouragement of self-regulation of the private sector, and, accordingly:

- a) Ensure that national anti-discrimination employment law applies to all employers, including public authorities, natural and legal persons, and guarantees equality in all spheres of public and private employment and occupation.
- b) Ensure that the scope of national anti-discrimination employment law includes membership of and involvement in professional organisations and trade unions and the enjoyment of the benefits provided by such organisations, collective bargaining, remuneration, vocational training and guidance, social protection and the exercise of economic activity.
- c) Enact legislation against discrimination on more than one ground to provide protection from multiple forms of discrimination.
- d) Ensure that discriminatory provisions which are included in individual or collective contracts or agreements, internal regulations of enterprises, and rules governing the independent professions, access to credit and loans, and workers' and employers' organisations are amended or abrogated.
- e) Drawing upon regular monitoring of equality data relating to employment, provide the necessary legal tools to review the compliance of all laws, regulations and administrative provisions at the national and local level with the prohibition of racial discrimination in employment. Laws, regulations and administrative provisions, including obstacles to the hiring of workers from the groups of concern to ECRI, found not to be in conformity with the prohibition of discrimination, should be amended or abrogated.

Public procurement

- f) Enact legislation permitting contracting authorities additional possibilities of imposing sanctions in the public procurement process on economic operators who have violated international obligations regarding non-discrimination, including EU standards in the field of social and labour law or international social law.

Legal duties on public authorities

- g) Enact legislation requiring public authorities when carrying out their functions, including their employment functions, to promote equality and prevent and eliminate racism, racial discrimination and harassment on the enumerated grounds.

Legal duties on employers

- h) Enact legislation requiring all employers to promote equality, prevent and eliminate racism, racial discrimination and racial harassment in employment.
- i) Enact legislation ensuring that harassment is prohibited in employment and all employers are required to ensure that the work place is free from racial harassment or intolerance.
- j) Enact legislation making the employer liable for acts of unlawful racial discrimination or racial harassment committed in the course of employment. The employer will be liable unless he or she can prove that he or she took such steps as were reasonably practicable to prevent the unlawful acts.
- k) Reinforce the work of existing labour inspection services and provide them with sufficient resources to deal effectively with the elimination and prevention of racism, racial discrimination and racial harassment in employment.

Reprisals

- l) Enact legislation providing protection against dismissal or other retaliatory action for workers who complain of racial discrimination or racial harassment and ensure that those who act as witnesses or provide support to them including employees or others who report such acts or provide evidence are protected from any adverse treatment as a result.

2) KNOWLEDGE OF LEGISLATION

Take steps to improve knowledge of equality rights and of the existence of specialised bodies and complaint mechanisms, including provisions for mediation, reconciliation and arbitration, among groups of concern to ECRI and to improve knowledge of anti-discrimination law and practice among judges and lawyers and, accordingly:

- a) Promote the engagement of civil society groups representing the interests of those who experience racial inequality in the national strategy to eliminate racial discrimination.
- b) Develop a national education and capacity building strategy to enhance the capacity of members of groups of concern to ECRI to challenge racism, racial discrimination and racial harassment in employment.
- c) Protect and support the advocacy work of civil society organisations working to eliminate racial discrimination and advance equality.

- d) Provide training for judges, prosecutors, lawyers as well as all relevant government officials in anti-discrimination law and practice.
- e) Provide training for employers in their duties and responsibilities under national anti-discrimination law including in the rights of workers to be treated with respect and to be free from racial discrimination or racial harassment in employment.

3) ACCESS TO JUSTICE

Improve the access of victims of discrimination to justice and ensure that accessible legal or administrative processes providing prompt and effective remedies are available to them and, to that end:

- a) Review access to judicial and/or administrative proceedings dealing with complaints of employment discrimination to ensure that these are easily accessible to groups of concern to ECRI, including reviewing time limits.
- b) Enact legislation to require a sharing of the burden of proof between complainants and respondent employers, and provide practical guidance and training for judges and lawyers in its application.
- c) Establish procedures which require the employer to provide the complainant with an explanation of the facts in dispute in a prospective or actual discrimination complaint.
- d) Provide that the law should guarantee free legal aid¹ for racial discrimination and racial harassment cases in the field of employment before the competent tribunal and, where necessary, a court-appointed lawyer, for victims who wish to go before the courts as applicants or plaintiffs and who do not have the necessary means to do so. If necessary, an interpreter should be provided free of charge.
- e) Ensure that the national anti-discrimination legislation enables specialised bodies or other similar institutions, trade unions, associations and non-governmental bodies, which have, according to the criteria laid down by the national law, a legitimate interest in combating racism and racial discrimination, to bring employment discrimination cases to the relevant tribunal. The law should permit such bodies to bring cases either on behalf of or in support of the victim, provided the victim gives his or her consent in writing.
- f) Establish accessible procedures for resolving employment discrimination complaints through alternative dispute resolution processes such as mediation, conciliation and arbitration.
- g) Enable the competent tribunals to consider evidence obtained as a result of situation testing in accordance with the national legal system.

¹ In line with General Policy Recommendation No.7 and in accordance with the national eligibility criteria.

4) RECRUITMENT

Take action to eliminate racial discrimination from all recruitment and selection procedures and ensure that such procedures guarantee equal opportunities for all applicants and, accordingly:

- a) Ensure that employers test and review their recruitment and selection procedures to eliminate racism and direct and indirect racial discrimination, including reviewing their conditions for access to employment, selection criteria, recruitment processes, as well as selection for promotion and access to training opportunities and practical work experience.
- b) Encourage employers to ensure that their recruitment and selection criteria focus on the experience, qualifications and competencies required for each post.
- c) Enact legislation making it unlawful to publish or to cause to be published an advertisement which has a discriminatory purpose or effect.
- d) Empower the specialised body to monitor and take action to prevent discriminatory advertisements.

5) EQUALITY OF OPPORTUNITY

Take action to eliminate barriers to employment for members of groups of concern to ECRI which result from racism and racial discrimination and work to create an integrated workforce and, accordingly:

- a) Ensure that individuals of working age who are legally permitted to reside in the member State are entitled to a work permit, within a reasonable time period.
- b) Promote the development of mentoring and shadowing programmes to facilitate engagement between employers and members of groups of concern to ECRI.
- c) Enact legislation to establish national transparent mechanisms for the assessment, certification and recognition of qualifications including prior learning and previous experience, irrespective of the countries in which they were acquired and whether they were acquired formally or informally, without prohibitive translation or notary costs.
- d) Promote through campaigns and other means, the adoption and implementation of good anti-discrimination practice and equality and diversity standards across all areas of employment, including promoting the benefits to employers of a diverse and multicultural workforce.
- e) Establish language courses for members of groups of concern to ECRI free of charge whenever possible and encourage campaigns to enable their integration in the workplace.
- f) Ensure equal access to self-employment opportunities, such as access to finance and credit, for groups of concern to ECRI.

- g) Ensure that all employers provide equal opportunities for the progression of all members of groups of concern to ECRI in their careers and to that end provide them with the necessary in-service and other training.
- h) Ensure that management and human resources personnel receive the necessary initial training and professional support to be able to interact with ethnically, religiously and linguistically diverse employees and to eliminate and prevent racial discrimination and racial harassment.

6) RACIAL DISCRIMINATION

Take steps to eliminate racial discrimination in the work place. In particular, take specific steps to eliminate racial harassment in employment and, to that end, conduct campaigns against racial harassment in employment and encourage employers to establish mechanisms to prevent such harassment, racism and intolerance in the workplace, including the adoption and implementation of anti-harassment policies and the appointment of appropriate staff and establishment of procedures, including mediation, to deal sensitively and quickly with harassment complaints.

7) POSITIVE ACTION

Make full use of the provision for positive action measures in international and European anti-discrimination law and, to that end:

- a) Promote a labour market which adequately reflects the diversity of the population and take all necessary steps to overcome barriers to access to employment experienced by groups of concern to ECRI by, among others, investing in programmes that build employability skills for such groups.
- b) Enact legislation permitting employers to adopt temporary special measures designed either to mitigate or compensate for disadvantages suffered by persons designated by the enumerated grounds or to facilitate their full participation in employment. These measures should not be continued once the intended objectives have been achieved.
- c) Provide clear guidance, including practical examples, on the scope for employers to take specific positive action measures in employment.

8) SANCTIONS

Ensure that the law provides victims of discrimination with effective remedies and that sanctions for unlawful racial discrimination and racial harassment in employment and recruitment are effective, proportionate and dissuasive and, accordingly:

- a) Review sanctions available to the relevant courts and tribunals to ensure they include powers, among others, to:
 - i. make a declaration on the rights of the complainant and the employer;
 - ii. order the employer to pay compensation for material and moral damages to the complainant;

- iii. punish persistently offending employers through imposing additional fines;
 - iv. where appropriate, order the reinstatement of the unlawfully dismissed complainant into the employer's work place;
 - v. make recommendations to employers and/or order change, within a specified period, in the employer's future practice and impose sanctions on employers who fail to comply.
- b) Empower relevant state bodies to suspend licences and permits, make declarations of non-compliance with anti-discrimination law and disqualify employers from tendering for public contracts.

9) STRENGTHEN POWERS AND ROLE OF SPECIALISED BODIES

Ensure that the specialised bodies and other national institutions that combat racism and racial discrimination have the appropriate organisational structures, accountability mechanisms, leadership and adequate resources to be independent and effectively deploy their functions and use their resources strategically in accordance with the standards set by ECRI's General Policy Recommendations No.2 and No.7; to that end: review the powers of these institutions to enable them to work more effectively in the field of employment towards combating racial discrimination and racial harassment and to promote equality of opportunity including by empowering the bodies to bring cases before the courts and to intervene in legal proceedings as an expert.

10) GENERAL PROVISIONS

Ensure that the national strategy to promote equality and eliminate and prevent racism, racial discrimination and racial harassment in employment is implemented at all government levels and supported with equality data and sufficient allocation of resources, and, accordingly:

Data collection

- a) Implement effective monitoring and accountability of the national anti-discrimination strategy by developing indicators and setting benchmarks, gathering and monitoring equality data, establishing criteria for measuring and evaluating the impact of actions undertaken and, accordingly:
 - i. invest in, and create initiatives for, gathering and analysing employment equality data with compliance of data protection rules and consistent with the principles of confidentiality, informed consent and individuals' voluntary self-identification as members of a particular group, and in consultation with the groups concerned;
 - ii. require public authorities to monitor their workforce composition and make reports available on request to the specialised body;
 - iii. enable the specialised body to publish disaggregated data regularly on employment which is benchmarked and disaggregated by, among others, "race", colour, language, religion, nationality or national or ethnic origin.

National employment contract

- b) Develop and promote the adoption by all employers of a national model employment contract which requires employers to meet minimum legal labour law and anti-discrimination standards and promote equality and diversity in employment.

Codes of conduct and equality plans

- c) Develop and promote codes of conduct for good practice in employment and equality plans in order to create a diverse working environment which encourages respect for all. These will support employers to promote equality and eliminate and prevent racial discrimination and racial harassment in the workplace, including, among others, in recruitment and selection, in access to opportunities for training and promotion, and in termination of employment.
- d) Enable the specialised bodies to monitor the implementation of such codes and plans, and provide practical support to employers through the provision of training and materials, practical guidance on equality matters such as procurement, positive action and recruitment, and by encouraging employers to adopt equal opportunities and anti-harassment policies.

Incentives

- e) Develop incentives to encourage employers to embrace good practice in employment, for example official recognition awards, tax reductions for employers with a multicultural workforce or for those undertaking agreed positive measures such as employing members of groups of concern to ECRI.

EXPLANATORY MEMORANDUM

Introduction

This General Policy Recommendation (hereafter: the Recommendation) focuses on combating racism, racial discrimination and racial harassment in the field of employment. It aims to develop and strengthen ECRI's General Policy Recommendation No.7 which sets out the elements that need to be included to ensure that national legislation to combat racism and racial discrimination is as comprehensive as possible. In particular, this Recommendation aims to ensure that adequate legislation is in place for combating racial discrimination and promoting equality in the field of employment. ECRI believes that both adequate legislation and the active promotion of equality are essential to enable groups of concern to ECRI to overcome barriers to employment and achieve full participation in the labour market. It recognises the important role public authorities, employers and the social partners play, in partnership with the national authorities, in achieving this goal through, among others, programmes for integration, good practice and positive action.

While positive outcomes from legislation outlawing discrimination in the field of employment are noted, ECRI's country monitoring work observes barriers to its implementation and effectiveness in most Council of Europe member States. Recalling that non-enforcement of relevant existing legislation discredits action against racism and intolerance in general, this Recommendation also provides guidelines to ensure that legal remedies are made accessible and are used in practice.

ECRI has also observed that racism and racial discrimination in employment manifest themselves in many different forms, including harassment, victimisation, discrimination by association, perceived discrimination, multiple discrimination, instructions to discriminate, aiding and abetting discrimination, and segregation. Therefore, this Recommendation emphasises the importance of ensuring equal opportunities in employment for all persons in practice, irrespective of the specific form in which racism and racial discrimination takes place.

The Recommendation covers the following phases of employment: conditions for access to employment, to self-employment and to occupation, including selection criteria as well as recruitment and promotion conditions, whatever the branch of activity and at all levels of the professional hierarchy; vocational guidance and training; conditions of employment, including remuneration; membership of trade unions and enjoyment of benefits of collective bargaining; working conditions; career development and advancement; and termination of employment.

The Recommendation is addressed to the governments of all Council of Europe member States, which are responsible for establishing an effective legal and political framework for combating racism, racial discrimination and racial harassment in society in general and in the field of employment in particular. It is their duty to ensure that all the relevant actors in this field, including public authorities and bodies (among others specialised bodies mandated to combat racism, xenophobia, antisemitism and intolerance at national level), social partners (among others, trade unions and employers' associations), NGOs and public and private employers take effective action against racism, racial discrimination and racial harassment in the field of employment.

In line with ECRI's mandate, the Recommendation concentrates on instances of racism and racial discrimination on the grounds of "race", colour, language, religion, nationality or national or ethnic origin (the enumerated grounds). However, ECRI is aware that discrimination, as well as harassment, in the field of employment also occurs on other grounds, such as age, disability, gender, gender identity or sexual orientation. Attention should be drawn to the fact that many of the recommendations contained in this text could be applied *mutatis mutandis* to these other grounds.

Definitions

"Racism and racial discrimination"

In its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, ECRI defines racism and racial discrimination as follows:

a) *"racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.*

b) *"direct 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.*

c) *"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.*

"Groups of concern to ECRI"

In its country-by-country monitoring work, as well as in its work on general themes, ECRI has dealt with the situation of numerous groups which are particularly vulnerable to acts of racism, xenophobia, antisemitism and intolerance. In ECRI's General Policy Recommendation No.4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, it is suggested that identification of such categories *"will depend according to national circumstances, and may include for example immigrant groups, national minorities and/or other vulnerable groups"*. ECRI's annual reports have listed under the category of "vulnerable groups" Roma¹, migrants, Muslims, refugees and asylum seekers, members of Black and Jewish communities, as well as other religious minorities.

¹ In its General Policy Recommendation No.13 on combating anti-Gypsyism and discrimination against Roma, ECRI states that the term "Roma" includes not only Roma but also Sinti, Kali, Ashkali, "Egyptians", Manouche and kindred population groups in Europe, together with Travellers, so as to embrace the great diversity of the groups concerned. The term of "Roma" used in this Recommendation refers to the same definition.

Paragraph 1 of the Recommendation (Legal Review)

The Recommendation emphasises at paragraph 1(a) that the prohibition of racial discrimination in employment applies to all employers regardless of size, whether in the public or private sector. In its country-by-country monitoring ECRI notes that some national anti-discrimination law does not make it clear that employers who are natural or legal persons are liable for acts of unlawful discrimination. The Recommendation stresses that the prohibition on discrimination applies to employers that are either natural or legal persons.

The guarantee of equality and protection from racism, racial discrimination and racial harassment at paragraph 1(a) is intended to apply to all workers, however defined by national law. From its country-by-country monitoring ECRI is aware that national anti-discrimination law in some member States does not provide adequate protection against discrimination or harassment for workers such as contract workers, seasonal workers, agency workers, agricultural labourers, seafarers, military personnel and statutory officeholders. In addition, workers in certain sectors do not enjoy the protection of the law, for example, domestic workers undertaking work in private households. In many countries, domestic workers do not have the protection of national employment law and, as a result, they are particularly vulnerable to racial discrimination and racial harassment in respect of conditions of employment and work.

Paragraph 1(b) recommends member States to ensure that the scope of national anti-discrimination employment law has a broad application. The exercise of economic activity includes, among others, the issuing of permits to carry on a trade, for example street vending.

Multiple discrimination

Paragraph 1(c) sets out a recommendation for member States to provide legal protection from multiple forms of discrimination. Some people experience disadvantage because of discrimination on several enumerated grounds. For instance, ethnic minority people may find themselves discriminated against not only because of their racial or ethnic origin but also because they are women, or disabled, or LGBT or old or any combination of these factors. “Multiple discrimination” refers to discrimination suffered on two or more enumerated grounds, for example, on the grounds of religion and gender as experienced by a Muslim woman.

“Intersectional discrimination”, which is a different concept and has only recently been recognised, at least in international fora, refers to a situation where several grounds interact with each other at the same time in such a way that they become inseparable and their combination creates a new ground. For instance an employer promotes both Black men and White women in his employment but never promotes Black women. The employer is not discriminating on grounds of “race” or gender, but may be doing so on grounds of a combination of “race” and gender. The concepts of multiple or intersectional discrimination are rarely covered by national discrimination law which tends to focus on one ground of discrimination at a time.

Equality data

Paragraph 1(e) sets out a recommendation for member States, drawing on equality data, to provide the necessary legal tools to review the compliance of all laws, regulations and administrative provisions, as well as policies, with the prohibition on discrimination. ECRI has noted that relevant data broken down by different

categories such as “race”, colour, language, religion, nationality or national or ethnic origin can provide important baseline information on the situation of vulnerable groups to inform social policies targeted at equality in employment and also to evaluate the impact of such policies so that any necessary changes and adjustments may be made.

The collection of such data should be systematically carried out in accordance with the principles of confidentiality, informed consent and individuals’ voluntary self-identification as members of a particular group and with full respect of data protection principles established in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has set out the principles governing the processing of personal data and taking account of recommendations adopted by the Committee of Ministers developing guidelines for the implementation of the Convention in specific sectors or circumstances.

Public procurement

The Recommendation in paragraphs 1(f) aims to ensure that public procurement is in conformity with the relevant commitments within WTO or EU standards, which require that all considerations in public procurement, including social considerations be linked with the subject matter of the contract. In addition to sanctioning, public authorities may be required to monitor and promote implementation of these contract clauses. Contractors may be further required to provide the contracting authority with an equality plan which should identify how the contractor promotes equality and non-discrimination in employment and in the provision of their services. The competition authorities or national specialised bodies may be involved in the process of evaluating and assessing these equality plans. Public authorities may also set exclusion criteria allowing them to take into account the previous record of the contractor in the field of non-discrimination, for instance a final judgment for offences relating to discrimination or the equal treatment of workers.

Legal duty on public authorities

In paragraph 1(g) it is recommended that the law should require public authorities when carrying out their functions, including their employment functions, to promote equality and prevent and eliminate racism, racial discrimination and racial harassment. This Recommendation aims to impose an obligation on public authorities actively to promote equality in employment and not merely to avoid discrimination.

ECRI recognises that public authorities, including local and regional authorities, act as major employers in many member States and as such should eliminate discrimination and promote equality in their employment practice. They also have an important role to play in providing a model of good employment practice to the public and private sectors.

The duty on public authorities to promote equality requires them to create and implement “equality programmes” drawn up with the assistance of the specialised body. Such equality programmes should include the public authorities’ employment function and require an assessment of the impact of all the authorities’ employment policies and decisions on the promotion of equality and the elimination of racism, racial discrimination and racial harassment. Understanding the potential impact of employment policy and decision-making on different groups in society will assist public authorities to make informed decisions and to eliminate any discrimination on the enumerated grounds.

Assessing the impact of employment policy or decision-making on equality may require an assessment or analysis of good equality data, gathered by a variety of means including consultation with the affected groups. The results of the assessment should inform and improve the authorities' decision-making processes.

For instance, where a public authority suspects that the proportion of ethnic, religious or linguistic minorities in its employment is low in comparison to the ethnic, religious or cultural profile of the society in which it operates, it should undertake an assessment of its staff by collecting equality data on the "race", colour, language, religion, nationality, and national and ethnic origin of its existing workforce. On the basis of this information, the authority could identify a number of gaps, such as an under-representation of vulnerable groups in its overall employment, or an under-representation at particular grades or levels of seniority within the authority. It should then undertake an analysis of its employment policies and practices and set objectives, within a specified timeframe, to meet the gaps identified, putting in place systems to monitor and evaluate equality data in targeted areas such as the success rates of job applicants, take-up of training opportunities, applications for promotion and success rates, grievances and complaints, dismissal, redundancy, retirement, and the length of service or time spent on different pay grades. Finally, it should monitor and evaluate over time its progress in achieving its equality objectives.

Legal duty on employers

In paragraph 1(h) it is recommended that the law should require employers to promote equality, prevent and eliminate racism, racial discrimination and racial harassment in employment. The employer could fulfil this duty by implementing an equality action plan which sets a timetable within which, among others, to develop or review equality and anti-harassment policies and procedures, review recruitment, selection and redundancy procedures, develop appropriate positive action measures, and develop and implement a programme of equal opportunities and harassment training for all staff. The equality action plan should set targets for achieving the actions and for monitoring and evaluating progress.

Promoting equality and preventing and eliminating racial discrimination in employment could include action to remove or minimise disadvantages experienced by groups of concern to ECRI. This could include identifying and removing barriers that prevent individuals from groups experiencing inequality from accessing employment, for example, because the job selection criteria include mother tongue language skills which are not necessary to do that particular job effectively and which act as a barrier to migrant workers or religious or ethnic minorities. Other examples include taking steps, within reasonable time limits, to meet the particular needs of religious minorities such as making a room available to staff for prayer, or, if the employer provides refreshments or meals for staff, meeting dietary requirements. Taking steps to meet the particular needs of linguistic minorities might include providing or translating essential employment documents into relevant minority languages. Other steps might include ensuring that workplace dress codes do not indirectly discriminate against vulnerable groups and that any restrictions on dress, including hairstyles, are justifiable.

Harassment

The Recommendation at paragraph 1(i) makes employers responsible for ensuring that the workplace is free from racial harassment. Harassment is one of the major forms of discrimination and it is difficult to prove. Racial harassment occurs when unwanted conduct related to the enumerated grounds takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. For instance, if an employer mocks his/her employee's religious practice and beliefs and makes derogatory statements to him/her about his/her faith, these statements may amount to harassment on the grounds of religion.

Harassment can occur at the hands of the employer, his or her employees, agents, customers, service users or clients. Harassment by customers, service users or clients is a frequent occurrence in many workplaces which provide services to the public; for instance medical staff are particularly vulnerable to harassment when providing emergency or other health care services. The law should ensure that all workers are protected from unlawful harassment, whether at the hands of the employer, his or her employees, agents or the public who are customers, service users or clients.

Vicarious liability

The Recommendation provides in paragraph 1(j) that law be enacted which makes employers liable for acts of unlawful racial discrimination or racial harassment which are done in the course of employment. The employer will be liable unless he or she can prove that he or she took such steps as were reasonably practicable to prevent the unlawful acts.

The aim of vicarious liability is to make employers, not taking the necessary measures, legally responsible for acts of unlawful racial discrimination or racial harassment which are carried out by employees, agents, customers, service users or clients.

For instance, if a shopkeeper goes on holiday and an employee, who is left in charge of the shop, unlawfully harasses a colleague by making him the butt of racial jokes and insults, the shopkeeper could be held legally responsible for the actions of the employee.

Employers who use recruitment agencies or similar services are responsible for others' actions, so they must be sure that these services act appropriately and in accordance with the relevant equality and diversity policies. Therefore, the vicarious liability of employers should apply also on behalf of agents for their unlawful acts of racial discrimination or racial harassment against agency workers working for the employers.

However, the employer will not be legally responsible if he or she can show that they took all reasonable steps to prevent the unlawful acts of racial discrimination or racial harassment. Reasonable steps require the employer to be aware of what employees, agents, customers, service users or clients are doing and to take active measures to implement the employer's equality duty, such as having and putting into action an equality policy or providing equality training for workers.

Labour inspection services

The Recommendation provides in paragraph 1(k) that the work of existing labour inspection services should be reinforced and sufficiently resourced to effectively deal with the elimination and prevention of racism, racial discrimination and racial harassment in employment. By regularly visiting workplaces, labour inspectors can monitor and promote legal compliance with employment rights legislation. They can provide impartial information on a wide variety of employment rights legislation to employees, employers and the public through awareness raising programmes. They can monitor employment rights for all workers and seek redress. The Recommendation also provides that member States, if necessary, ought to review and increase existing labour inspection services assigning greater importance to their enforcement and advisory services. These powers are essential if employees keep quiet about discriminatory practices because they fear losing their jobs. Effective labour inspection services can reduce the need for victims to take legal action through the courts or even to give evidence.

Reprisals

In paragraph 1(l) it is recommended that the law should provide protection against dismissal or other retaliatory action for workers who complain of racial discrimination or racial harassment. Protection against victimisation, as a consequence of making a complaint or acting as a witness or otherwise in support of a person who has experienced discrimination, is essential if discrimination is to be eliminated from the workplace.

Paragraph 2 of the Recommendation (Knowledge of Legislation)

Paragraph 2 sets out a recommendation for member States to take steps to improve knowledge of equality rights and of the existence of specialised bodies and complaint mechanisms among groups of concern to ECRI. ECRI's country's monitoring has often reported the lack of awareness among vulnerable groups of how to bring discrimination complaints and of sources of help in obtaining redress and this lack of awareness inhibits the reporting of discrimination complaints and the effectiveness of legal protection. This view is supported by research from other international organisations indicating that persons with an ethnic minority or immigrant background are often either unaware or unsure about the existence of anti-discrimination legislation, including in the field of employment, and about organisations that could offer support to victims of discrimination - be this a government-based or an independent institution such as specialised body or NGO.

To overcome these barriers to accessing justice, ECRI has often recommended that national authorities conduct appropriately targeted information and awareness-raising campaigns in the private and public sectors in order to make the relevant anti-discrimination legislation and existing remedies known, especially among the most vulnerable, and to improve its implementation. This could include initiating national and local information campaigns and other awareness activities on the relevant provisions of national anti-discrimination legislation among workers, especially among groups of concern to ECRI, as well as employers, employment agencies, national and decentralised public authorities. To overcome lack of knowledge of their right to protection, training should also target vulnerable groups, including migrant and other workers, in partnership with specialised bodies and trade unions. Information on relevant legislation should be made available in multiple

languages to reach a wider audience and to ensure that ethnic minority groups and migrants are also aware of their rights.

Training should also be offered to judges, prosecutors and lawyers to enhance understanding of European anti-discrimination standards and support the development of professional, impartial and independent adjudication of complaints in accordance with a fair procedure by properly qualified personnel.

Specialised bodies and others should provide support for employers on statutory duties, legal responsibilities, positive action and procurement. Action should be taken to encourage employers to disseminate information about workers' rights to equality and protection from discrimination and the available remedies in cases of discrimination.

Training for national, regional and local government officials, and civil servants on equality and non-discrimination linked to their specific job functions should also be provided. Recognising the powerful role of the media in influencing public opinion, ECRI recommends that journalists should also be trained in order, among others, to counter negative and stereotypical views of Roma and other vulnerable groups appearing in the media.

Paragraph 3 of the Recommendation (Access to Justice)

The Recommendation provides in paragraph 3(a) that member States should review access to judicial and/or administrative proceedings dealing with complaints of employment discrimination to ensure that these are accessible to groups of concern to ECRI, including reviewing time limits, with a view to ensuring that complainants have access to justice.

ECRI considers that member States should ensure that, in practice, members of such groups should be able to make complaints, and that the judicial or administrative mechanisms are free, accessible and rapid. A low cost public advice service staffed by specialist advisors as well as, in urgent cases, fast-track procedures leading to interim decisions should be available to victims of discrimination. ECRI considers that, bearing in mind the complexity of anti-discrimination law, the lack of adequate representation and financial resources available to complainants and the unavailability of state funded legal aid, time limits for lodging complaints should permit complainants to obtain adequate specialist advice, prior to submitting complaints to the relevant tribunal.

Burden of proof

The Recommendation provides in paragraph 3(b) that law be enacted to require a sharing of the burden of proof between complainants and respondent employers.

A shared burden of proof means that the complainant should establish facts from which it may be presumed that there has been direct or indirect discrimination, whereupon the onus shifts to the respondent to prove that there was no discrimination. The employer must prove that he or she has not acted unlawfully and that any differential treatment was objectively and reasonably justified by reasons unrelated to the enumerated grounds.

For instance, in a situation where the owner of a small manufacturing company only allows staff to take annual leave during designated shutdown periods in August and December, a Muslim worker who is refused holiday time to undertake the Hajj

considers that he has been subjected to unlawful indirect discrimination on the grounds of religion. The worker must establish facts that demonstrate that the employer's annual leave policy adversely affects Muslim workers. The onus is then on the employer to prove that the annual leave policy has an objective and reasonable justification, such as the legitimate operational needs of his business. It is for the national court to verify that the facts alleged are established and to assess the sufficiency of the evidence submitted in support of the employer's case that he or she has not breached the principle of non-discrimination.

Member States should provide practical guidance and offer training in the application of the shared burden of proof for judges and lawyers.

Procedures regarding explanation of facts

The Recommendation provides in paragraph 3(c) that member States should establish procedures which require the employer to provide the complainant with an explanation of the facts in dispute in a prospective or actual discrimination complaint. From its country-by-country monitoring ECRI is aware that complainants face difficulties in collecting the necessary evidence to prove discrimination complaints. Requiring the respondent in a discrimination complaint to provide, prior to the submission of the complaint, an explanation for the treatment complained of would reduce these difficulties and improve access to justice. The procedure could include powers to require the respondent employer to answer questions about the treatment complained of and power for the relevant tribunal to decide that, if the respondent deliberately, and without reasonable excuse, omitted to reply within a reasonable period or that his/her reply is evasive or equivocal, the tribunal could draw any inference from that fact that it considers it just and equitable to draw, including an inference that the employer committed an unlawful act.

For example, the legislation of a certain member State allows job applicants, who have a plausible claim that they have been discriminated in a recruitment process, to request that the employers provide information in writing concerning the education, working experience and other clearly ascertainable qualifications of the appointee for the post in question. However, the Court of Justice of the European Union concluded in a case referred by the German Federal Labour Court², that EU non-discrimination legislation does not entitle a worker, who has a plausible claim that he/she meets the requirements listed in a job advertisement and whose application was rejected, to have access to information indicating whether the employer engaged another applicant. The Court concluded, however, that a refusal by the employer to disclose any such information may be one of the elements to take into consideration when establishing the presumption overturning the burden of proof (on the burden of proof see above).

NGOs

The Recommendation provides in paragraph 3(e) that national legislation should enable trade unions, associations and NGOs to bring employment discrimination cases where there has been a breach of discrimination law. It can be in the public interest to challenge such violations even in cases when the unlawful conduct has no specific victim; for instance, the publication by an employer of a job advertisement discouraging "immigrants" from applying.

² *Galina Meister case (C-415-10)*

In employment cases victims of discrimination are in a vulnerable situation as the employment relationship is one of unequal power. Research shows that victims are also concerned about the negative consequences of bringing complaints, they do not know how to go about reporting complaints, are sometimes unaware of their rights, or they are discouraged by the complaints procedure. Free legal aid and the support of civil society groups may be critical in ensuring “equality of arms” between victims and employers. In certain member States both trade unions and public interest NGOs have standing to bring “actio popularis” discrimination cases which enables them to focus on institutional and structural discrimination where the rights of many are affected.

Mediation and conciliation

In paragraph 3(f) it is recommended to establish accessible procedures for resolving employment discrimination complaints through alternative dispute resolution processes such as mediation, conciliation or arbitration. The aim is to resolve disputes without recourse to legal procedures, thus avoiding costs, delay and a breakdown in employment relationships. The process of mediation uses a neutral mediator to assist the parties involved in a workplace dispute to reach a satisfactory solution which both sides are able to agree to. Mediation can involve face-to-face meetings between the parties with the assistance of the mediator. The process of conciliation involves an independent conciliator who works with the parties in dispute to find a solution that both sides find acceptable. Arbitration involves the appointment of an independent arbitrator who decides how the dispute is to be settled.

Situation testing

Paragraph 3(g) sets out a recommendation for member States to enable the competent tribunals to consider evidence obtained as a result of situation testing in accordance with the national legal system. Situation testing is an experimental method which aims to establish evidence of discrimination in practice. It consists in the process of creating artificially similar fact evidence that are based on circumstances similar to those which the actual victim experienced. The process tests the actions of the alleged discriminator analysing the employer’s response to the employee’s personal characteristics.

For instance, in one member State where a pharmacy was suspected of discrimination against Roma, a Roma woman applied for a job advertised by the pharmacy. She was told that it had already been filled. A non-Roma woman of the same age, acting as a tester and carrying a hidden cassette recorder, was offered an interview only minutes later and, even though she said that she had neither training nor experience, the employer indicated that she might be accepted. The Roma woman brought a claim before a court with the support of a NGO. The evidence from the test was declared admissible and she won her case. The respondent was ordered to apologise and pay damages to the claimant.

Situation testing can be a useful tool to overcome denials of the existence of discrimination. The evidence from the test can be admissible in court to support a claim that the employer behaved in a discriminatory manner. It can also be a useful tool for specialised bodies, NGOs, or researchers to raise awareness or as a quality control with regard to existing anti-discrimination practices.

Paragraph 4 of the Recommendation (Recruitment)

The Recommendation in paragraph 4 addresses recruitment and selection procedures to ensure that they guarantee equal opportunities for all applicants and that employers use a fair and objective procedure to recruit and select employees. In particular, paragraph 4(b) encourages employers to ensure that their recruitment and selection criteria focus on the experience, qualifications and competencies required for each post. A competency is an ability, skill, knowledge or attribute that is needed for successful performance in a job and is often defined in terms of behaviours, e.g. communication skills. The aim is to ensure that the employer uses justified criteria objectively to select employees which are based on the applicant's ability to effectively perform the tasks required.

Paragraph 4(c) sets out a recommendation for member States to enact legislation making it unlawful to publish or cause to be published an advertisement which has a discriminatory purpose or effect. It is good practice for employers to advertise widely for jobs so that they can attract and select staff from a wide and diverse pool of talent. The practice of recruitment from within the existing work force or on the basis of recommendations made by existing staff, rather than through advertising, can lead to discrimination. For example, where the workforce is drawn largely from one ethnic group, this practice can lead to continued exclusion of other ethnic groups. An advertisement can include a notice or circular, whether to the public or not, in any publication, on radio, television or in cinemas, via the internet or at an exhibition. Advertisements should not include any wording that suggests the employer might directly or indirectly discriminate by, for example, including words which suggest criteria that would disadvantage members of groups of concern to ECRI, unless the criteria can be objectively justified.

Paragraph 5 of the Recommendation (Equality of Opportunity)

Paragraph 5 sets out a recommendation for member States to take action to eliminate barriers to employment and paragraph 5(b) encourages them in particular to promote the development of mentoring and shadowing programmes.

Workplace mentoring is a learning partnership between employees for the purposes of sharing technical information, institutional knowledge and insight with respect to a particular profession. Formal mentoring programs allow organisations to create and nurture those relationships by matching more experienced employees (mentors) with less experienced employees to meet specific occupational objectives while helping those individuals in the mentoring relationship to identify and develop their own talents. Mentoring can be adapted to create an integrated workforce.

For instance, to address the under-representation of Black and other minority ethnic groups at senior levels in the broadcast media industry, a senior mentoring scheme was established with the aim to provide members of these groups with the support, encouragement and guidance necessary to reach the most senior roles in the industry. Participants were teamed up with a mentor for 12 months during which period they met with their mentor on a number of occasions to discuss where they were, where they would like to be in their career and how to get there. Targeted at talented staff, the scheme focused on overcoming barriers to progress, developing confidence, enhancing skills and finding ways to forward the participant's career, and educational and professional development.

Work shadowing is the process of accompanying and observing someone in work in order to train or gain an insight into a particular area of employment. Offering work shadowing or mentoring opportunities to people from a particular vulnerable group aims to raise aspirations and build knowledge and confidence among members of the group about applying for work or promotion opportunities, because they will know more about what is involved.

For instance, a judicial shadowing scheme could provide junior lawyers with an opportunity to gain insight into the reality of holding judicial office by allowing them to work shadow a serving judge. The experience could provide them with the opportunity to gain a better understanding of the role and responsibilities of judges and would open up the potential of applying for judicial office to individuals who might otherwise not consider this as a career path.

Mechanism for recognition of qualifications

In paragraph 5(c) it is recommended that member States enact legislation to establish a national transparent mechanism for the assessment, certification and recognition of qualifications. In the field of employment, groups of concern to ECRI experience additional discrimination in relation to the recognition of qualifications obtained abroad. Members of these groups tend to be employed in jobs that do not reflect their qualifications and they face barriers to progression within the job. Although employment in low paid sectors can be regarded as an entry point to higher wage levels, in practice this rarely happens. Employers justify this underemployment by pointing out that immigrants do not have sufficient national language skills despite the fact that many of the job opportunities denied to immigrants do not require higher level language requirements. Because of difficulties they experience in finding a job, members of groups of concern to ECRI may be forced to accept lower wages. ECRI considers that the underutilisation of the skills, qualifications and experience of such workers is a waste of talent and expertise. In certain countries, projects have been put in place to assist migrants by assessing their skills and giving them expert advice and guidance on recognition of their qualifications. At the same time specialised government agencies may exchange information internationally and assist in the establishment of appropriate and relevant standards for equivalent qualifications and skills in different national contexts. For instance, the remit of the National Academic Recognition Information Centres³ could be extended to cover not only academic qualifications but also non-academic qualifications, including those obtained outside the European Union. These centres should be staffed and financed appropriately

Good anti-discrimination practices and equality and diversity standards

Paragraph 5(d) recommends the promotion of the adoption and implementation of good anti-discrimination practice and equality and diversity standards across all areas of employment.

Implementing good equality practices in the workplace greatly reduces the likelihood that employers will unlawfully discriminate and thereby face legal claims against them. Good practice can also help the employer conduct his/her core business

³ National Academic Recognition Information Centres and National Information Centres on academic recognition and mobility were established by the European Commission, the Council of Europe and UNESCO/CEPES to facilitate recognition of foreign diplomas, degrees and other qualifications.

better. Organisations have found that taking positive steps to promote equality and diversity has benefits which include;

- greater worker satisfaction, which helps attract new staff and retain those already there, reduced recruitment costs and increased productivity;
- improved understanding of the experience of their existing or potential customers, clients or service users;
- filling skills gaps.

Member States can assist employers to implement equality in the workforce, in the workplace and in customer and supplier activities by providing funding for the implementation of diversity taskforces in the workplace, including training and awareness raising activities on non-discrimination, equality and diversity management and by promoting the benefits to employers of a diverse and multicultural workforce.

Paragraph 6 of the Recommendation (Discrimination in Employment)

Paragraph 6 sets out a recommendation for member States to take steps to eliminate discrimination in employment. Racism and racial discrimination are not limited to the fringes of society and have many faces: in particular racial harassment in the workplace. Members of groups of concern to ECRI may be scapegoated for economic difficulties. If racism is to be rooted out completely, its manifestations such as ethnic slurs or verbal abuse in the workplace must be challenged.

Harassment adversely affects not only the victim, who may be unable to develop or function properly at work, but can also have a negative effect on the work environment. Employers should clearly communicate to all employees - through a written policy or other appropriate mechanisms - that harassment such as ethnic slurs or other verbal or physical abuse related to the enumerated grounds is prohibited. An employer also should have effective and clearly communicated policies and procedures for addressing complaints of harassment and should train managers on how to identify and respond effectively to harassment.

Paragraph 7 of the Recommendation (Positive Action)

Paragraph 7 sets out a recommendation for member States to make full use of the provision for positive action measures in international and European anti-discrimination law. Positive action includes temporary and proportionate measures or strategies to counter the effects of past discrimination, to eliminate existing discrimination and to promote equality of opportunity. Paragraph 7(a) sets out a recommendation for member States to enact legislation permitting employers to adopt special temporary positive action measures. Positive action can be critical in encouraging members of groups of concern to ECRI to participate in employment or economic life, particularly in areas where their participation is disproportionately low. Examples of positive action by member States include the development of programmes that build employability skills, such as apprenticeships and traineeships for vulnerable groups; the provision of adult education in areas where such groups live including vocational training and qualifications for higher-skilled sectors; targeted scholarships and research fellowships for higher education; free access to language and literacy training; ensuring equal access to new technologies, or training programmes (with provision for child care) targeted at women from vulnerable groups. Positive action aimed at improving Roma's participation in employment includes developing employment projects which are highly practical and offer

flexible training adjusted to their lifestyle and specific needs. The existing skills of Roma, which may have been acquired informally through experience and family transition, should be taken into account and accredited,

Positive action by employers includes, for instance, advertisements or other promotional work aimed at encouraging applications for jobs from members of groups of concern to ECRI as well as setting targets for recruitment and monitoring attainment of these targets.

Paragraph 8 of the Recommendation (Sanctions)

Paragraph 8 sets out a recommendation for member States to ensure that the law provides victims of discrimination with effective, proportionate and dissuasive remedies. At the same time it is important to convey a message to all employers and employees that discrimination will not be tolerated. These remedies include powers to the competent tribunal to make recommendations to employers and/or order change, within a specified period, in the employer's future practice. Such recommendations could include recommending or ordering the employer to adopt equality policies, end discriminatory practices, or train staff on anti-discrimination law and on good practice in employment.

Paragraph 9 of the Recommendation (Specialised Bodies)

The Recommendation in paragraph 9 focuses on strengthening the powers and the role of specialised bodies as envisaged by ECRI's General Policy Recommendations No.2 and No.7. Specialised bodies in different member States engage a wide range of powers in the fight against discrimination. These include the power to investigate complaints of discrimination and enforce compliance with the results of their investigations. Some specialised bodies have powers to take legal action in the public interest or to initiate an "actio popularis" to protect the rights of groups or individuals whose rights have been, or could be, violated by a particular course of action. Other examples include the legal standing to bring complaints to the relevant tribunal or court for discriminatory advertisements, discriminatory collective agreements, patterns of discrimination, persistent breaches of discrimination law, or a failure to implement an agreed equality programme or comply with a relevant statutory equality duty.

In its General Policy Recommendation No.2 ECRI has acknowledged that "*according to the legal and administrative traditions of the countries in which they are set up, specialised bodies may take different forms. The role and functions of such institutions should be fulfilled by bodies which may take the form of, for example, national commissions for racial equality, ombudsmen against ethnic discrimination, Centres/Offices for combating racism and promoting equal opportunities, or other forms, including bodies with wider objectives in the field of human rights generally*". However, recently ECRI has nevertheless been concerned about disproportionate reductions in the budgets of national specialised bodies. In ECRI's view, when assessing such bodies' need for funding, one must bear in mind the crucial role they are called upon to play, in particular in times of economic difficulty. Particular care should, therefore, be taken not to hamstring their efforts and undermine their credibility by scaling down their staff costs and general level of financing. Preserving their effectiveness should, on the contrary, be the overriding objective.

In relation to the equality duty on public authorities, ECRI has recommended that the law should provide effective implementation mechanisms, including the option of legal enforcement of equality programmes notably through the national specialised body.

Concerning discrimination in employment, specialised bodies or other similar institutions should have the legal means to be able to conduct independent surveys including opinion polls on the perception by the general population of racial discrimination in employment; these institutions should ensure adequate monitoring of the situation of all groups of concern to ECRI in the field of employment. In addition such Institutions should be able to conduct *ex officio* investigations, or investigations at request to establish whether the obligations of equal treatment in employment have been violated on grounds such as “race”, colour, language, religion, nationality or national or ethnic origin and be able to make decisions on the basis of the investigations.

An equality ombudsman should be identified within the organisation to whom people can turn for advice and support in discriminatory cases. This person should be well-rehearsed and knowledgeable of the individual's rights and options for attaining protection.

The role of specialised bodies should be known to workers, victims of racial discrimination and other interested parties through relevant awareness raising activities. Specialised bodies should be able to undertake outreach work and provide independent assistance to victims of racial discrimination or racial harassment to enable them to pursue their complaints including legal advice, support to take legal action and legal representation.

Specialised bodies should have the power to make recommendations to national, regional and local government bodies, public authorities and employers. They should monitor media practice, undertake advocacy work with national associations, trade unions, civil society actors working on anti-discrimination in employment and with the media, professional and regulatory bodies for journalists, and promote best practice in the training of journalists, including on the reporting of “race” issues.

Specialised bodies should have sufficient resources in order to be able to advise and guide public authorities and employers on their legal equality duties and take legal action to enforce those duties. These institutions should establish dialogue with groups of concern to ECRI to learn from their experience in order to build mutual trust and develop effective methods of working.

Paragraph 10 of the Recommendation (General Provisions)

The Recommendation in paragraph 10 covers miscellaneous measures promoting non-discrimination in employment. A national employment contract can be a model employment contract which requires employers to meet minimum legal labour and anti-discrimination standards and promote equality and diversity in employment. It can be developed in consultation with business and trade unions. Codes of conducts provide practical guidance on how to implement anti-discrimination standards and to promote equality and diversity in employment. Once adopted by employers, they signal commitment on the part of employers to the principle of non-discrimination. They facilitate self-regulation and may attract a diverse workforce.

Besides systems of quota or fines, governments may develop positive incentives to encourage employers to embrace non-discrimination in employment. The incentives can be of financial nature, for instance tax or insurance reductions for employers with a multicultural workforce or funding for training programs. They can also be of non-financial nature, such as recognition awards or certificates.

Governments can also publish research on concrete examples of employees with a foreign background being of value to a company trading with the country in question. This will help highlight the benefit of employing people with the knowledge of the culture, language of and networking in the countries of foreign trading partners.