

**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF AUSTRIA SUBJECT TO INTERIM FOLLOW-UP**

Adopted on 4 December 2012¹

¹ Any developments which occurred after 30.03.2012, date on which the response of the Austrian authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2007)986/4.1.

1. *In its report on Austria (fourth monitoring cycle) published on 2 March 2010, ECRI strongly recommended that the authorities take urgent steps to provide more financial and human resources to the Ombudsperson for Equal Treatment in the field of employment, irrespective of ethnicity, religion and beliefs, age and sexual orientation, and to the Ombudsperson for Equal Treatment, irrespective of ethnicity and gender, in other areas, so as to enable them to fully perform all the tasks that have been assigned to them. It further recommends that the requisite measures be taken forthwith to ensure that their full independence is enshrined in law and in practice, and to enable them to apply to the courts whenever they deem necessary.*

ECRI notes that in 2009 the Federal Austrian Chancellery, despite its limited budget, provided each of these two Ombudspersons with an additional permanent post. However, ECRI has been informed that, the increase in resources notwithstanding, it has not been possible to appoint regional officers dealing with discrimination on the grounds of ethnic origin and religion or belief. Up to now there are only regional officers dealing with equal treatment between women and men.

Therefore, in ECRI's view, the first part of this recommendation has not been fully implemented and additional financial resources are required for the Ombudspersons to be able to carry out all their tasks.

ECRI welcomes the fact that the Federal Law on the Equal Treatment Commission and the Equal Treatment Ombudspersons' Office was amended in 2011 by a provision stating that the Ombudspersons cannot receive instructions and are autonomous and independent. However, on the organisational level the Office of the Ombudspersons for Equal Treatment is still part of the Federal Chancellery. The officers of the Ombudspersons' office are employees of the latter. The Ombudspersons do not control their human resources and budget-planning. The Head of the Ombudspersons' Office is required to provide the Federal Chancellor with information about its management upon request, which is another limitation on the Ombudspersons' independence (see ECRI's General Policy Recommendations (hereafter GPR) No. 2 principle 5 and GRP No. 7 § 24 and §§ 50 ff. of the explanatory memorandum).

ECRI also regrets that the Ombudspersons still cannot represent victims in administrative or court proceedings. ECRI welcomes the negotiations initiated by the Ombudspersons with the Federal Chancellery in order to discuss the funding by the Chancellery of strategic litigation initiated by partner organisations.

ECRI, therefore, considers that its recommendation concerning measures to be taken to ensure the full independence of the Ombudspersons' Office and to enable them to apply to the courts has not yet been fully implemented.

2. *In its report on Austria (fourth monitoring cycle) ECRI recommended that the Austrian authorities promote the reestablishment of a regulatory mechanism for the press, compatible with the principle of media independence that would make it possible to enforce compliance with ethical standards and rules of conduct including the refusal to promote, in any form, racism, xenophobia, antisemitism or intolerance. It suggests that the authorities consider enacting legislation if there is no other option.*

In 2010 the Austrian Press Council was re-established as a self-regulating institution for the print media on a voluntary basis, intended to safeguard editorial quality and guarantee freedom of the press. The Austrian Press Council has established a code of honour for journalistic work, which is to be regarded as a set of ethical guidelines for media representatives providing guidance on topics such as the prevention of discrimination on the basis of race, religion, gender, national origin or any other ground. This code also serves as basis for the decisions of the Press Council's Senates on complaints. ECRI views very positively the fact that the Press Council's Senates can

render a decision even if the newspaper concerned is not member of the Council and in absence of an arbitration agreement. Decisions may be published anyway. ECRI welcomes the successful efforts by the Austrian authorities leading to the re-establishment of the Austrian Press Council.

ECRI also welcomes the authorities' decision to grant an annual allowance to the Press Council to cover the costs of this body without affecting its independence. In ECRI's view, the logical continuation of these efforts would be to encourage all major newspapers to join the Press Council and to extend the Council's competence to cover electronic media, radio and television.

ECRI considers that its recommendation concerning the re-establishment of a regulatory mechanism for the press has been implemented.

3. In its report on Austria (fourth monitoring cycle) ECRI reiterated its recommendation that the authorities ameliorate the response of the criminal justice system and of the persons responsible for internal control within the different police units to allegations of racist or racially discriminatory behaviour on the part of the police. In particular, it reiterates its call for the establishment of an independent body with powers to investigate individual complaints of human rights violations on the part of the police, including acts of racism and racial discrimination.

The authorities have informed ECRI that on 1 January 2010 the independent Federal Bureau of Anti-Corruption (BAK) and on 1 September 2011 the Central Public Prosecutor's Office for the prosecution of commercial criminal matters and corruption (WKStA) were established. Both are competent to investigate on abuse of authority comprising racial discrimination. These measures show the authorities' willingness to improve and make more transparent the criminal-law response to allegations concerning police officers' misconduct.

However, in ECRI's view this is not sufficient. Firstly, the two bodies are part, respectively, of the police and prosecution service, while ECRI recommends member States to entrust the investigation of allegations of racial discrimination and racially motivated misconduct by the police to an authority independent of the police and prosecution, (GPR No. 11 § 10). Secondly, the two above-mentioned bodies can only investigate intentional criminal offences (Section 4 (1) BAK-AG; Section 20b (3) of the Code of Criminal Procedure; Section 302 of the Criminal Code). Thirdly, there is no indication that victims of discrimination are aware of the two bodies' competence to investigate alleged discriminatory behaviour, which is not in any way published.

Moreover, ECRI is aware that the independent Administrative Panels (Section 88 of the Law on Security Police) do not have all the powers recommended in GPR No. 11 (§ 10 and §§ 58-61 of the explanatory memorandum).

Therefore, ECRI considers that its recommendation to set up a fully independent body entrusted with the investigation of alleged cases of racial discrimination and racially motivated misconduct by the police has not been implemented.

