

ANNEXE : POINT DE VUE DU GOUVERNEMENT

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Croatie.

Conformément à sa procédure de monitoring par pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de la Croatie sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui ne tient compte que de développements jusqu'au 7 décembre 2017, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

Comments by the Croatian authorities on the Fifth Report of the European Commission against Racism and Intolerance on Croatia

The Government of the Republic of Croatia appreciates that in the Fifth Report of the European Commission against Racism and Intolerance on Croatia the progress in a number of areas concerning the field of racism and intolerance has been recognized. Croatian Government is fully determined to take into consideration the issued recommendations in order to further improve the situation in the field of racism and intolerance.

The Government would also like to thank ECRI for the adoption of a number of comments made by the Croatian authorities to the Draft ECRI Report on Croatia as well as for accepting some of their explanations that improved the quality of the final text of the Report.

In line with the established procedure concerning the possibility for a country under ECRI monitoring to provide its viewpoint in a separate Appendix, Croatia would like to provide ECRI with the following additional comments, in particular in the field of legislation against racism and racial discrimination and in the field of integration policies.

CRIMINAL LAW

- *As far as the “lack of reference to incitement to discrimination in the legal description of this criminal offense is concerned”, we would like to clarify:*

This criminal offense criminalizes public incitement to hate or violence towards a group or a member of a group in accordance with the said grounds of discrimination. By this, in the opinion of the Directorate of Criminal law of the Ministry of Justice, the content of reference to “incitement to discrimination” is covered.

- *Regarding the comment that “The Criminal Code lacks a reference to the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a group of persons on grounds of their race, colour, language, religion, nationality or national or ethnic origin”, we would like to provide following explanation:*

Public expression of ideology which claims that a particular group is superior on the basis of their race, color, language, religion, nationality or national or ethnic origin in the Republic of Croatia is sanctioned as a criminal offence. So, the less serious forms of this behavior will be sanctioned through misdemeanor legislation, more precisely through the Act on Misdemeanors against Public order and Peace. This Act in Article 5 sanctions the disturbance of the public order and peace by performing, reproducing songs, compositions and texts or by wearing of affixing symbols, pictures and drawings in the public place. This is sanctioned also through the Act on the Prevention of Disorder in Sports Competitions which in Article 4, paragraph 1, indent 7 stipulates as unlawful conduct, the singing of songs or by shouting messages whose content expresses or incites to hatred or violence on the basis of race, national, regional or religious affiliation. More serious forms of the unlawful conduct in question are sanctioned through provisions of Criminal Code, more precisely through article 325 of Criminal Code (public incitement to violence and hatred), as well as through other criminal offenses that, contain reference to hatred as a constitutional element of its perpetration.

- *Regarding the ECRI comment that “While Article 325 (1) of the Criminal Code covers the prohibition of the public dissemination or distribution of written, pictorial or other material containing racist manifestations, there are no designated provisions on the production and storage of such materials”, we would like to point out that:*

Although Criminal code does not contain an explicit incrimination involving cases of production and storage of material with racist content, in such situations, a significant practical importance would have the provision of Article 38 of the Criminal Code, which reads as follows: “whoever intends to help the other in committing of a criminal offense will be punished as though he/she committed it himself/herself and may be punished even less severely”. Thus, a person who would manufacture or store material with which another person committed a criminal offense under Article 325 or any other hate crime would be considered as help in accordance with the cited provision of the general part of the Criminal Code. Furthermore, in contrast to the above mentioned provision which incriminates the acts of assistance before the commission of the criminal offense, the Criminal Code in Article 303 also provides for a special offense entitled Assistance to the perpetrator after the perpetration of a criminal offense, punishing the person who hides or helps the perpetrator of the criminal offense, for which imprisonment of five years or more severe punishment is prescribed. This crime commits also whoever hides the means by which the criminal offense was committed, traces of a criminal offense or objects come up out of a criminal offense committed or acquired by criminal offence, or otherwise helps that the perpetrator is not revealed or arrested. For the above-mentioned criminal offense, imprisonment from six months up to five years is prescribed.

RETURNEES

- *Concerning the ECRI recommendation “that the authorities increase the budget for primary legal aid and put in place efficient mechanisms to ensure timely disbursement of funds. Primary legal aid providers should also be able to cover administrative fees for beneficiaries”, we would like to submit additional explanation:*

It is true that due to the constraints on the state budget funding for primary legal aid in 2016 has been reduced by 50% compared to 2015. Also, funds for providing primary legal aid in 2017 were originally envisaged in the amount of HRK 700 000,00. However, the Ministry of Justice, taking into account remarks of the primary legal aid provider, requested additional funds and after reallocation in the state budget for 2017 additional funds were provided in the amount of HRK 346 310,40. Funds in the amount of HRK 1.300 000,00 were provided for the financing of primary legal aid in 2018.

Moreover, in relation to the proposal to provide a mechanism for timely allocation of the funds, we emphasize that, in addition to the provisions of the Free Legal Aid Act (Official Gazette 143/13, hereinafter: FLAA), also the provisions of the Regulation on criteria, principles and procedures for funding and contracting of programs and projects of general interest to the associations (Official Gazette, No 25/15, hereinafter: the Regulation) are applied for carrying out tenders for the admission of primary legal aid projects. Pursuant to the provisions of the FLAA, the tender is announced once a year by the end of January, but since the end of January is the time when the primary legal aid providers’ reports are submitted for the previous year, the call for tenders is objectively possible only at the end of February, according to the complex procedure laid down in the Regulation. Therefore, the Ministry of <justice, through the enhancement of financial resources, organizational capacities and human resources, provided better prerequisites in 2018 for carrying out tenders for funding projects of primary legal aid providers.

With regard to the recommendation that primary legal aid providers should also be able to cover administrative fees for the primary legal aid beneficiaries, we point out that the FLAA prescribes the forms of primary legal aid that can be provided by providers - general legal information, legal advice, submissions to public law bodies, European Court for human rights and international organizations in accordance with international treaties and rules on the work of those bodies, representation in proceedings before public law bodies and legal aid in an administrative fees is governed by the Administrative Tax Act (Official Gazette 115/16), which provides for general exempt from payment of fees regardless the type of memorial or action in question (eg. citizens of a weaker property status). This regards also the exemptions from the fees which are conditioned by the purpose and are determined for certain documents and actions before the bodies which, within the scope of their authority, conduct the proceedings of perform an administrative action under the provisions of the Administrative Tax act or according to special regulations (eg requests and decisions in procedures for obtaining legal aid, memorials and actions for enrolment in the register of citizens and state records, as well as requests for issuance of documents from such records, all writings and actions in housing care procedures in the area of special state concert that are conducted according to special regulations, etc.). Because of this, the costs of paying administrative fees are not considered eligible costs that can be financed through tenders.

PROMOTING TOLERANCE AND COMBATING DISCRIMINATION

- Regarding the ECRI recommendation “that the authorities draw up and adopt an action plan, either as a separate policy document or part of the National Plan for Combating Discrimination (2017-2022), to combat homophobia and transphobia in all areas of everyday life including education, employment and health care” we would like to point out that:

The English versions of the National Plan to Combat Discrimination for period 2017 - 2022 and the accompanying Action Plan for implementation of the National Plan were submitted to ECRI on 23 April 2018. A number of activities set in the Action Plan within the areas of employment, social welfare, health, administration, judiciary, acces to goods and services etc. cover all discrimination grounds from the Antidiscrimination Act, including sexual orientation and gender identity.

