



CRI (99) 3

European Commission Against Racism and Intolerance

First report on the Russian Federation

Adopted on 26 January 1999

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

To date, three series of ECRI's country-specific reports have been made public, in September 1997 and in March and June 1998 respectively². A fourth series of country-specific reports was

¹ The report prepared by the Swiss Institute (ref: CRI (98) 80), covering relevant legislation in member States of the Council of Europe is available on the web site www.ecri.coe.int and, in hard copy, from ECRI's Secretariat.

² The first three series comprise reports on Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Slovenia and Switzerland.

transmitted to the governments of the countries concerned in November 1998, and is thus now being made public³.

The following report contains ECRI's analysis and proposals concerning the Russian Federation.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This fourth series of reports, for which the procedure was completed by November 1998, will be followed by other series of reports during 1999 on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

As from 1999, ECRI is beginning a follow-up procedure to its country reports, examining what action governments may have taken on the proposals they contained, up-dating their contents generally and focusing on specific issues of concern in greater depth. Some 10 countries will be addressed annually in this way, over the period 1999-2002.

³ Reports on Denmark, Estonia, the Russian Federation, Spain and the United Kingdom.

REPORT ON THE RUSSIAN FEDERATION⁴

Introduction

There are few countries that have faced challenges of a similar complexity and scale as those with which the Russian Federation has had to cope in recent years. The country has seen, within a very short time, radical changes in the way it is governed and in the social and economic framework within which its citizens live. These have begun to transform Russian society. They seek to reflect the principles of democracy, the rule of law, the free market and the institutions of a civil society. The background, however, has been that of the lasting and tenacious legacy of the previous regime combined with the inertia, and frequently the hostility, of persons and institutions opposed to change. To this must be added the continuing uncertainty about the balance of political power between the centre and the subjects of the Federation, the on-going debate over the respective scope of the responsibilities of the Presidency and the legislature and grave problems in the economic and military spheres and in law enforcement.

The Russian Federation covers a land area of over 17 million square kilometres. Its population comprises some 176 different nationalities - although 82% of the population is Russian/Slav in origin. There are 89 regional government units (called "subjects" - subyekty). These comprise 21 ethnically-defined republics named after their incumbent nation, each having the right to adopt its own constitution and legislation; and 6 krai (provinces), 49 oblasts (regions), as well as the cities of Moscow and St. Petersburg. In addition, there is one autonomous oblast and 10 autonomous okrugs (districts), which, with one exception, are parts of krays or oblasts, and seek to preserve and develop the originality of the national groups living in their territories. Ethnicity has been a central principle at the heart of the Russian/Soviet administrative order since the Soviet period, although the federal structure was largely a fiction, regional and minority interests being subordinated to the security, economic and diplomatic concerns of the Soviet government. The importance of ethnicity ("nationality" in Russian terminology) is also demonstrated by having been traditionally recorded in domestic passports – until a recent policy change - and some other personal documents. It should be noted, however, that, even in the republics and in the autonomous oblast and okrugs, the titular ethnic population is most commonly outnumbered by people of Russian origin.

The 1993 Constitution recognises the principle of equality between subjects. The relationships between the individual subjects and the centre in terms of powers and responsibilities, however, are not uniform. There have been negotiations between a number of the subjects and the Federal authorities resulting, in many cases, in bi-lateral agreements which reflect the circumstances of the relationship in any given case and which do not always facilitate the implementation of federal legislation and policies.

⁴ Note: Any development subsequent to 19 June 1998 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

The disintegration of the Soviet order, coupled with radical political, economic and social reforms instituted since the late 1980s, has exacerbated inter-ethnic tensions and highlighted the complex ethno-political inheritance from the past. The principal legacy of this earlier period is an intricately interwoven set of ethno-territorial units, sizeable minorities outside or lacking their own 'homeland' and significant populations opposed to rule from Moscow. Since Russian independence, minority communities have had simultaneously to redefine their relationship with Moscow and begin to come to terms with the Russian imperial colonial past, often looking for greater autonomy or even independence. Negotiating the process of building a new framework for a multi-ethnic and multicultural Russia has generated a wide variety of problems, including direct and indirect discrimination against certain ethnic groups and, on occasion, violence.

The current mix of political attitudes and conflicts is reflected in the present inadequate and inconsistent pattern of law-making and law enforcement at all levels which obstructs the ability of the current system to cope with these phenomena.

The position is exacerbated by the economic situation. Although this had improved, and to some extent stabilised, over the last year, there are still grave structural problems; and there is, in particular, an on-going fiscal crisis. This has led to cuts in public expenditure which have, in turn, impacted on the quality of the country's infrastructure and could potentially have serious social consequences.

The key areas identified by ECRI as requiring particular attention include:

- the need to develop an effective body of anti-discrimination law and effective specialised bodies;
- the need to challenge public expressions of ultra-national extremism and xenophobia, including notions of racial superiority, and the continued prevalence of anti-Semitic sentiment;
- the discriminatory effects of the propiska-type system introduced by local ordinances;
- the discrimination suffered by particular ethnic groups such as the peoples of the Northern Caucasus;
- the apparent lack of an effective judicial and law enforcement system that can guarantee the objective, speedy and efficient prosecution of racist or xenophobic behaviour and the investigation of alleged malpractice on the part of law enforcement agencies;
- the alleged misbehaviour of law enforcement personnel in certain areas and the position of the Cossacks;
- the need to develop further and reinforce the institutions of an effective civil society;
- additional measures to promote religious tolerance and equality.

I LEGAL ASPECTS⁵

A. International Legal Instruments

1. The Russian Federation has signed and ratified most major international legal instruments of particular relevance to ECRI. According to the Constitution, international treaties to which the Russian Federation is a party are a constituent part of its legal system. If an international agreement establishes rules other than those stipulated by a law, the rules of the international treaty apply.
2. The Russian Federation has not signed the European Charter for Regional or Minority Languages nor the European Social Charter.
3. ECRI welcomes recent developments regarding ratification of the European Convention on Human Rights and urges the appropriate bodies to proceed quickly to the practical application of the Convention in domestic law. ECRI further urges the prompt ratification and implementation of those other relevant instruments referred to above which the Russian Federation has not yet signed.

B. Constitutional Provisions

4. Under the 1993 Constitution, Article 19 provides broadly for the principle of equality. Any form of restriction of the rights of citizens on grounds of "social, racial, national, linguistic or religious affiliation is prohibited" (Article 19(2)). "Propaganda or agitation exciting social, racial, national or religious hatred and hostility" are impermissible. "Propaganda of social, racial, national, religious or linguistic superiority is prohibited." (Article 29 (2)).
5. In Russian language and law, nationality usually means ethnic, national or religious origin or affiliation. On this basis, Article 26 of the Constitution specifies "Everyone is entitled to determine and indicate his national affiliation. No-one may be compelled to determine and indicate his national affiliation."(Article 26(1)).
6. Everyone has the right to use his or her native language and to the free choice of language of communication, upbringing, education and creative work (Article 26(2)). Language rights are also dealt with under Article 68 whereby, as a multinational state, the Russian Federation "guarantees to all its peoples the right to retain their native language and to create conditions necessary for its study and development." (Article 68 (3)). Specific reference is made in Article 69 to the guarantee of the rights of "numerically small indigenous peoples" in accordance with the generally recognised principles and norms of international law and the international agreements of the Russian Federation.
7. The Law on National Cultural Autonomy entered into force on 17 July 1996. It provides for a system of associations, or national cultural autonomies, at federal, regional and local levels as a form of national and cultural self-determination and self-organisation, for the preservation and development, for example, of lifestyles, traditions, language, education and self-awareness of ethnic groups. At the same period, the Outline of

⁵ A full overview of the legislation existing in the Russian Federation in the field of combating racism and intolerance is provided in the publication CRI (98) 80, prepared by ECRI by the Swiss Institute of Comparative Law

Russian State Policy on Nationalities was adopted, which reiterates constitutional provisions on the equality of rights of ethnic groups, and seeks to improve the conduct and coordination of policies towards ethnic groups or nationalities by combining the efforts of federal and constituent authorities with the ethnic communities. About 126 national cultural autonomies have been created since. Among them, the Ukrainian, Polish and German autonomies are the largest and have the most advanced programmes for their development. Such legislation, which includes the creation of a Consultative Council on national cultural autonomies, appears a welcome development although ECRI has no detailed information on its effectiveness in practice. The draft plan of action putting into effect the Outline appears to require considerable financial resources.

8. Parallel to the rights contained in the Constitution of the Russian Federation, the constitutions of the Republics, charters of the krai, oblasts and other constituent entities of the Russian Federation also contain measures against discrimination. Moreover the 1995 federal Law "On general principles governing the organisation of local authorities in the Russian Federation" includes provisions for giving special or supplementary rights to peoples, nations, minorities and ethnic groups⁶.

C. Criminal Law Provisions

9. The anti-discrimination provisions of the Constitution are reflected in a new Criminal Code which entered into force in the Russian Federation as of 1 January 1997. These appear to represent an improvement on the 1960 Criminal Code under which the intentions of the perpetrator were key in applying the law, and the requirement of 'direct intent' also made prosecution of accessories to this type of crime difficult. As noted below, the provision was seldom applied (see paragraph 44).
10. The 1996 Criminal Code attempts to change the traditional approach. It contains separate provisions on "Violation of the equality of citizens" (Article 136) and "Incitement to hatred based on race, religion or nationality" (Article 282). The latter makes punishable "actions directed at instigating national, racial or religious hatred, belittling nation dignity, as well as the propagation of exclusiveness, superiority or deficiency of citizens because of their attitude to a religion, or their national or racial affiliation, if such behaviour is committed in public or using mass media". As far as propaganda is concerned, therefore, direct intent to incite hatred is no longer required. While this development is to be welcomed, it is too early to evaluate the practical application of the new provisions. Concern has been expressed, however, by some local human rights organisations that the broad definition contained in Article 282 may permit abuse, including restrictions on the freedom of speech.
11. The 1996 Criminal Code also provides for the imposition of more severe penalties if, in certain instances, the motive of national, racial or religious hatred or enmity is present in committing an offence or, generally, such motive constitutes an aggravating circumstance (Article 63.1).
12. In addition to the above-mentioned Criminal Code provisions, the 1991 Media Law prohibits "The use of mass information media ... to stir up national [ethnic], class, social or religious intolerance or hatred ...".

⁶ Ibid.

13. The Duma passed in second reading in February 1997 a federal bill banning the propagation of fascism (generally a synonym in the Russian Federation for "hate speech" or racist utterances). During 1994 - 1997 several attempts to adopt such legislation failed.

D. Civil and Administrative Law Provisions

14. According to the Labour Code of 1971, in offering employment and in defining the rights and duties arising from employment, employees shall not be discriminated against on account of sex, nationality, race or religion (Article 16). No information is available to ECRI on the enforcement of this legislation.
15. The Public Associations Law of 1995 prohibits the registration of public associations, the goals, activities or statutes of which involve racial or national intolerance. ECRI is aware that the Ministry of Justice refused registration to Russian National Unity (RNU) on this basis, although it is not known otherwise to what extent this provision has been applied.
16. While the Civil Code provides recourse against the violation of civil rights by a state body, it does not appear to be regularly used, or successfully invoked, to counter purported discrimination.
17. In line with its general policy of advocating framework legislation on racial discrimination, containing a series of measures in criminal, civil and administrative law, ECRI notes that there is no such provision in Russian law. ECRI draws attention in particular to the desirability of the Russian Federation developing an integrated body of anti-discrimination legislation. Such legislation would render illegal acts of discrimination on social (as well as on religious and gender) grounds in specific areas of social and economic activity; and it would be backed up by appropriate avenues of judicial redress for individuals and by effective sanctions and enforcement, both at national and at local level.

The necessary conditions for such legislation -- in terms of political attitudes, judicial and administrative machinery and legislative opportunity -- may not yet be present. ECRI considers, however, that this legislation and its supporting systems represent a goal towards which the Government of the Russian Federation should consciously work and on which it should concentrate a collective effort in co-operation with human rights institutions and its subjects.

E. Presidential Edicts and Resolutions

18. Under Article 90 of the Constitution, the President is empowered to issue edicts and resolutions, which are mandatory for execution throughout the territory of the Russian Federation.
19. On 23 March 1995, the President issued decree no. 310 entitled "On Measures to Coordinate Activities of the State Authorities in Order to Counter Manifestations of Fascism and Other Forms of Political Extremism in the Russian Federation". With a view to implementing this decree, law enforcement units have undertaken certain measures. Local groups of the RNU (see above paragraph 15) in St Petersburg, Ekaterinburg and Orenburg have been disbanded, and in 1997 about 20 criminal cases have been opened. A special "Commission on Combating Political Extremism in the Russian Federation", coordinated by the Justice Ministry, was established under the President of the Russian Federation by Presidential Decree no. 1143 of 27 October 1997. An expert body has been created in the framework of the Commission, composed of representatives of various public associations. Its activity to date has comprised primarily drafting new legislative proposals.

F. Relationships between the Centre and the Subjects

20. The constitutional arrangements of the Russian Federation since 1993 appear to be characterised, on the one hand, by a strong access of Presidential power in respect of the functions exercised by the centre and, on the other, by bi-lateral arrangements with the 89 subjects of the Federation which, in many cases, have been given considerable powers and responsibilities of their own. Under the Constitution, while certain powers are reserved to the centre, all else is deemed to be the responsibility of the regions -- with certain areas identified as being of joint, concurrent jurisdiction.
21. The effect of this essentially political compromise, in terms of practical administration, appears to be a potential incoherence in the implementation of legislation and a lack of consistency. Thus, Article 71 (c) of the Constitution allocates to the Russian Federation the responsibility of "regulating and protecting" the rights and freedoms of man and the citizen and the rights of national minorities. Article 72 (b), on the other hand, makes the "protection" of these rights one of the areas of joint, concurrent jurisdiction with the subjects. Even with the "regulation" of these rights remaining an exclusive federal responsibility, the distinction between "regulation" and "protection" is unclear; and the concurrent jurisdiction on the latter seems in principle liable to result in conflicts between the centre and its subjects.
22. ECRI appreciates the strength of the political and economic forces that have moulded the present constitutional arrangements; it also notes that these arrangements have had little time as yet in which to establish themselves. ECRI, nevertheless, feels that it should register its concern that the jurisdictional issues identified above could hinder the formulation and implementation of policies in the areas covered by its remit.

G. Specialised Bodies

23. ECRI attaches considerable importance to the establishment and strengthening of bodies (generally called "specialised bodies") which can effectively and independently monitor the situation in a particular country whether as regards human rights generally or specifically in relation to racial discrimination, and offer means of redress. ECRI expressed its views on these institutions, together with detailed recommendations on the forms they might take, in its General Policy Recommendation No 2. Whatever form such a body might comprise, this recommendation underlines the fundamental importance of the body being financially independent and free from state interference. The recommendation also reflects principles and standards agreed at both European and UN levels.
24. ECRI therefore welcomes the fact that, at the legislative level, the Russian Federation has taken steps to develop bodies with remits and functions related to human rights in general - under which heading ECRI considers that issues relating to racial discrimination and religious intolerance should be included.
25. Whilst welcoming the spirit underlying these developments, however, ECRI has doubts on whether they can yet be said to have been fully and effectively implemented and on whether they meet all the essential criteria for specialised bodies set out in its General Recommendation No 2. As regards the human rights commissioner, belatedly appointed by the Duma only in May 1998, ECRI hopes he will act firmly in combating, inter alia, racial discrimination. Although 80 subjects of the Federation have created Commissions on Human Rights, concern has been expressed that only a small number of those established are operating effectively. On questions of status, it is not clear that all these institutions are perceived to possess the essential degree of independence from the executive authorities or have the powers necessary to offer clear avenues of redress in cases of discrimination against individuals or groups.
26. In respect specifically of issues of race and religion, ECRI doubts whether these issues (or those noted above) can be addressed adequately in the absence of legislation (a) setting out a rational and comprehensive framework within which it is possible for individuals effectively to pursue legitimate complaints against illegal acts of discrimination and (b) defining the role of the relevant advisory and enforcement institutions at the level of the Federation itself and its subjects. The absence of such a legal base is noted elsewhere in this report.
27. ECRI recognises the difficulties of creating effective new institutions in this field - particularly in such a short timescale. ECRI recommends, however, that the Government of the Russian Federation should collectively review the position and consider how best to meet the concerns that have been expressed (here and elsewhere), taking into account ECRI's General Policy Recommendation No 2 on Specialised Bodies.

II POLICY ASPECTS

H. The Judicial System

28. Article 10 of the Constitution provides for a separation of powers between the legislative, executive and judicial organs, all of which are declared to be independent. Article 46 guarantees judicial protection of rights and freedoms, the judicial review of administrative acts, including those of state and local government, and the right of appeal to international bodies where this is provided for in international agreements. The structure, jurisdiction and composition of the various parts of the judicial branch are set out in Articles 118-129. These include provision for a Constitutional Court dealing exclusively with issues relating to the constitutionality of decisions and agreements by the executive authorities at federal and subject level.
29. The Constitution correctly reflects the crucial importance of an effective judicial system to a federal state as geographically spread, as incoherent and as diverse as that of Russia. The role of the Constitutional Court in particular is fundamental to the ability of the federal authorities to ensure that human rights, including measures to combat discrimination and intolerance, are observed in all the subjects of the Federation and that conflicts of policy and jurisdiction are properly resolved. ECRI notes, however, a tendency of some of the subjects of the Federation to issue local ordinances on religious freedom which, on the face of it, appear to raise issues of compatibility with the intentions of federal legislation that the Court ought to be able to consider. ECRI has noted also reports of statements by the Moscow authorities apparently implying an unwillingness to conform with judgments of the Court on the question of residence permits. ECRI hopes that the importance of the independent and pro-active role of the Constitutional Court in this area is reflected in the strict observance of its decisions.
30. ECRI welcomes current efforts to strengthen the role, to improve the training and to reform the procedures of the lower courts in the areas of criminal and civil jurisdiction. It notes, in particular, the recent Judicial System Act, which entered into force in 1996 and which contains guarantees of independence in the administration of justice. It is also conscious, however, of a scarcity of resources and of a shortfall in the recruitment of qualified judges that inhibits these efforts. Concerns have also been expressed, notwithstanding the aspirations of the Constitution and the recent measures, about the extent to which the lower branches of the judiciary are perceived still to be open to influence by non-judicial interests. Moreover, some evidence continues to emerge that courts at local level at times express sentiments of religious or racial prejudice. It is not clear to ECRI that these concerns have yet been fully addressed. It is important, in ECRI's view, that efforts to do so be intensified.

I. Law Enforcement

31. There is general concern that, in a number of instances relevant to ECRI's remit, the law enforcement authorities in the Federation have not pursued suspected offences sufficiently actively. A particular concern to ECRI is that there have been examples in some areas of active harassment and ill treatment of specific minorities, particularly those distinguished by skin colour. It has been alleged that, despite complaints by aggrieved parties, there has been no obvious or sustained response by the authorities concerned.

32. It is not clear to ECRI that appropriate systems are in place, even in areas which are matters of joint jurisdiction, to monitor complaints by members of ethnic minorities against alleged abuse of law enforcement powers whether by the local police, traffic police, or the prokuratura. Although it is one of the duties of the prokuratura to investigate complaints, no independent system appears to exist in which the public could place confidence; and even in the context of the existing system, little information seems to be available on the numbers of complaints received by the various authorities, from whom or on how they were dealt with.
33. All these matters (complaints, the nature of police activity and the priorities of prosecution policy) appear to involve relations between the centre and local offices. The Ministry of the Interior has general responsibility for the police. However, there is considerable evidence that local police officers substantially reflect local political priorities in their operations. In the field of racism and intolerance, this has obvious dangers. As regards prosecution policy, there is also a question of who sets the priorities for the policies of the regional offices of the Procurator General in the areas of concern to ECRI. This is of particular importance as the Procurator General's Office has been given specific responsibility for human rights. It seems to ECRI difficult to see how these responsibilities can be carried out without a firm lead from the centre. ECRI emphasises the need, in line with the Russian Federation's commitment to the Parliamentary Assembly on joining the Council of Europe, to introduce new legislation in accordance with the Organisation's standards on the role, functioning and administration of the Procurator's Office. ECRI strongly recommends that the concerns outlined above be closely examined during this process and that the Federation authorities should consider, at the same time, how to improve oversight of local police offices under the control of the Ministry of the Interior and how to introduce a demonstrably effective system of redress against alleged police misconduct in a form that commands public confidence.

J. Discriminatory impact of the system of residence permits on certain categories of citizens/non-citizens

34. In 1993, the Law on the Right of Russian Citizens to Liberty and Movement and Choice of Temporary or Permanent Residence within the Russian Federation came into force, replacing the previous strict regimen which required permission from the authorities to register one's place of residence - the propiska system. ECRI is moreover aware that the Constitutional Court has subsequently, on a number of occasions, ruled that the propiska is unconstitutional, rulings the Federal Government has followed up by decree. However, ECRI is concerned that throughout the country the local ordinances which have been enacted to regulate domicile for newcomers often closely resemble the propiska system and that the requirements which are commonly set for domicile impact disproportionately and in a discriminatory manner against persons of identifiable ethnic origin - "visible" minorities: refugees, as well as displaced persons from the Caucasus and Central Asia. It also appears that, as a result, such groups are especially vulnerable to arbitrary arrest, detention and torture or ill-treatment by the police. While ECRI recognises that in the absence of a free property market and with housing shortages, local authorities will want to regulate the freedom of choice of domicile for newcomers to ensure a satisfactory distribution of available living space and other social benefits, it feels that any such regulation should be devised and applied in a way that does not impact disproportionately or lead to any form of discrimination against particular minority groups.

35. The city of Moscow, while not an isolated example, has been regularly cited for violating the rights of non-residents and ethnic minorities, as well as the rights of those endeavouring to seek asylum, through the implementation of a particularly restrictive propiska-type registration system in a discriminatory manner. As of March 1998, the Moscow City authorities, who ascribe responsibility for a rise in crime to the arrival of newcomers there and thus justify registration with the police as a measure to combat this, continued to defy Constitutional Court rulings. Moscow City police strictly, but selectively, continue to implement the policy. Increased police brutality against Caucasians, Central Asians and third-world refugees during enforcement of the registration system was widely reported prior to Moscow's 850th anniversary in September 1997. Discriminatory treatment similar to that recorded in Moscow with regard to the propiska regime and action by law enforcement personnel has been documented in the territory Stavropol, where people from other countries of the Commonwealth of Independent States (CIS) fled several years ago, and in Krasnodar territory, where Meskhetian Turks from Uzbekistan⁷ sought refuge (see paragraphs 39-41). Citizens of CIS member states do not require visas to enter the Russian Federation and under Government Resolution no. 290 of March 1997 they have the same status as Russian citizens as regards registration requirements. In practice, however, this right appears to be either restricted or invalidated by local ordinance, in Moscow and elsewhere.
36. The propiska system itself governs the enjoyment of many other political, social and economic rights. ECRI considers that while asylum seekers, refugees and (involuntary) displaced persons or "forced migrants" might be subject to a particular regime, this should not affect their basic social and political rights. ECRI is also concerned that the central role assigned to the police in the registration procedure is not in conformity with the principles of a democratic society and has led to an abuse of authority exercised in a discriminatory manner. In view of this, ECRI looks to the appropriate authorities to revise procedures for obtaining residency permits, retaining the information functions of such a system while discontinuing those which presently relate to control of the population. ECRI does not underestimate the scope and complexity of the necessary reform. It thus welcomes the assistance being provided in this respect as part of the follow-up activities to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Neighbouring States, organised by the United Nations High Commissioner for Refugees and other international organisations.

K. Refugees

37. The situation of asylum seekers, and the determination procedures followed in processing their claims, is of particular concern to ECRI. In February 1993, the Russian Federation adopted its first refugee law. It was apparently prepared under the assumption that it would serve to regulate the legal status of former Soviet citizens, who found it necessary to move to the Russian Federation from the newly-independent states which previously constituted the Soviet Union, for reasons stated in the 1951 Convention relating to the Status of Refugees or as a result of armed conflicts in the

⁷ Meskhetian Turks were deported to Central Asia by Stalin in 1944

former USSR. The law thus contained very generous provisions for persons recognised as refugees.

Partly as a result of its generous provisions, the 1993 law was not implemented with regard to persons originating from outside the former Soviet Union⁸. Moreover, even persons who were recognised as refugees were apparently not accorded the benefits due to them under this law. Consequently, new legislation -- On Amendments and Additions to the Law of the Russian Federation "On Refugees" -- was adopted and came into force in mid-1997.

38. The new legislation was originally proposed by the Federal Migration Service (FMS) and appears to have been intended to limit the number of asylum seekers who would be entitled to receive refugee status. In the course of drafting, a number of liberal amendments were introduced, although some provisions still constitute grounds for concern. For example, asylum seekers who submit applications for refugee status at the border and whose applications are denied registration for procedural reasons have to leave the Russian Federation within three days from the moment of the negative decision. Although the negative decision can be appealed, initiating such action does not have suspensive effect. There is potential here for abuse and ECRI thus considers the provisions need to be carefully monitored to ensure they are not applied in a discriminatory manner.

While the FMS is still involved in drafting sublegal acts and internal instructions for the implementation of the new law, it is too early to comment comprehensively on its effect. It has been claimed that without new instructions, local branches of the FMS are unable to process asylum claims. Notwithstanding improvements the law may represent, the situation of recognised refugees will continue to be of concern to ECRI while the discriminatory policy of local authorities on issuing residency permits remains prevalent (see paragraphs 34-36 above)⁹.

L. Racial Violence and Harassment

39. The position of certain ethnic groups gives rise to particular concern. Thus, the situation of the Meskhetian Turks in Krasnodar krai, which reportedly worsened during 1997 and early 1998 and is illustrative of a systematic policy of racial harassment and violence directed against a specific ethnic group, appears particularly disturbing to ECRI. For several years, they have been subjected by the regional authorities to a special discriminatory registration procedure¹⁰. Lacking residence permits, virtually all their

⁸ As of 31 December 1996, only 75 persons from countries outside the former Soviet Union, mostly Afghans, had received refugee status from the Federal Migration Service, the agency established to implement the Law on Refugees. The Presidential Commission on Human Rights estimated the number of refugees from outside the former Soviet Union at 500,000 in its 1994-1995 annual report; the UNHCR figure for registered asylum applicants for 1 January 1994 was 46,572, of whom more than half were from Afghanistan.

⁹ Article 8 of the new law, which covers rights and obligations of a recognised refugee, provides refugees the right to apply for permanent residence and for Russian citizenship "according to the legislation of the Russian Federation and to international treaties concluded by the Russian Federation."

¹⁰ According to the 1994-1995 report of the President's Human Rights Commission: "The Commission is in possession of figures from the Krymsk District (of Krasnodar Krai) on the ratio of applicants for a residence permit to those who have received one, broken down by ethnic group. The ratio is approximately the same for Azerbaijanis, Armenians, Belarussians, Greeks, Yezids, Russians and other nationalities. A major deviation from the average exists only in the case of the Meskhetians: out of 8,458 Meskhetians who applied for residence permits, only 9 received them. The statistics bear out the notion voiced frequently in the territory

other basic rights are affected, including the right to have their marriages or children recognised, access to social security and public health service, to be employed on a permanent basis, to own property, or to obtain personal documents like passports or driving licences. Since mid-1997 they are reportedly being required to re-register as persons coming from a CIS country for a short stay (45 days) only, despite having been at their present abode for several years. To register on each occasion one person is required to pay approximately US \$ 33. While obtaining such temporary residence permits may allow Meskhetian Turks certain social rights, it is nevertheless claimed that this procedure is intended to encourage the Meskhetian Turks to leave the locality.

40. It is further reported that members of the Cossack movement in Krasnodar, as in other areas of Southern Russia, the Cossacks' traditional territory, are actively participating in law enforcement, both together with and separately from local police forces. Cossacks are said to have been checking documentation of the Meskhetian Turks, searching their homes and in some instances undertaking their arrest and detention, behaving on occasion in an abusive and violent manner.
41. ECRI is aware that the situation in the region of the Northern Caucasus and Southern Russia presents very complex and difficult issues for the local and federal authorities, being one of the areas where the greatest impact of population movements in the Russian Federation has been experienced. ECRI also understands that negotiations have been conducted with the authorities of the Republic of Georgia with a view to the re-settlement of Meskhetian Turks in the territory from which they originated. At the same time, ECRI considers that action needs to be taken urgently, as a first step, to end discriminatory treatment, such as that experienced by the Meskhetian Turks, and to investigate the conduct of law enforcement officials, and paramilitary groups, reportedly responsible for the human rights violations which are occurring, with a view to prosecuting those persons suspected of criminal offences. ECRI understands that law enforcement units have apparently taken some measures to end discriminatory treatment against Meskhetian Turks and investigate the conduct of Cossack groups. The Rostov prokuratura has set aside some 30 Cossack orders and decisions concerning national questions - eviction of Chechen, the families of Meskhetian Turks, searching their houses, etc. ECRI hopes that these measures will be continued and intensified.

M. Statistics

42. There are helpful and detailed statistics on the national populations of the Russian Federation and on matters such as schools, newspapers and cultural institutions for national minorities. These figures, however, do not include statistics on the condition of ethnic minorities or the extent to which they are affected by social and economic policies - for example in the shape of breakdowns of the experience of the various ethnic minorities in respect of employment, housing, health, social services, education and law and order. Experience in other countries has demonstrated the usefulness of such statistics in monitoring the relative position of minorities in society and in constituting policies which might affect them. It is not clear where, within the current constitutional arrangements, the primary responsibility lies for preparing and implementing a refined system of data collection on these lines; and ECRI appreciates that this would need to be considered at both federal and local levels. ECRI suggests,

that residence permits for 'non-Slavic citizens' are rationed. Figures from other districts of Krasnodar territory confirm the same propiska policy based on ethnic affiliation."

however, that this issue should be considered by the appropriate federal agencies, in consultation with counterparts in the subjects, as part of a process of updating the statistical systems necessary to the functioning of the Russian Federation.

N. Racist and fascist/Nazi propaganda and materials

43. ECRI is aware of a tendency among certain political interests within the Russian Federation to propagate, as part of the ordinary currency of political and social debate, theories of racial superiority and derogatory comments on so-called racial characteristics (see paragraph 49). Some of the more extreme nationalist views, it has been argued, even have overtones of the theories of fascism. In such a situation, there is a clear need for effective and well-enforced legislation to protect ethnic minority communities from the effects of incitement to racial hatred and to symbolise society's disapproval of these practices.
44. ECRI therefore regrets that, despite the widespread nature of the practices referred to above, there were so few prosecutions under the relevant provisions of the Russian Federation's Criminal Code (Article 74) which applied up until 1 January 1997. Since that date, Article 74 has been replaced by two new Articles - Article 136 and Article 282 (see paragraph 9). ECRI welcomes these new Articles which represent a technical improvement on what went before. ECRI is not aware, however, of any vigorous campaign of enforcement since the new legislation came into force or of any significant increase in prosecutions of the offending conduct. Given the importance of the issue, ECRI strongly urges that the application of the new Articles be closely monitored with a view to ensuring their rigorous and objective enforcement.

O. Other Areas

- ***Chechnya***

45. ECRI notes that, although by virtue of the 1996 accord, the Chechen Republic remains part of the Russian Federation, the Federation is de facto unable to guarantee the application of federal laws and norms in this area. It would also appear that the regional authorities themselves face difficulties in combating crime and other illegal acts and, therefore, in guaranteeing the protection of minorities. The implications for minorities - ethnic or linguistic - in the territory of the Chechen Republic are obviously very serious. To the extent that much crime and violence is directed against such minorities, the situation in practice amounts to a severe form of discrimination. ECRI has to express its concern at the present position in the area and its hope that, by the time a decision comes to be taken on Chechnya's status in 2001, the situation will have been actively addressed either by the federal or the local authorities or both.

- ***North Ossetia: Prigorodnyi Raion***

46. The territorial dispute and intense inter-ethnic fighting between armed groups of Ingush and Ossetians resulted in the eviction of thousands of Ingush from Prigorodnyi raion in 1992, many of whom are still living as forced migrants in neighbouring territory. During 1997 some Ingush endeavoured to return to their former places of residence. Several were reported killed. While ECRI understands that there has been some progress in resolving the conflict, it is concerned that no serious advances appear to have been made with regard to the forced migrants' return. It believes that measures should be taken to ensure that the victims are protected against discrimination and afforded just

and adequate reparation pending the creation, at the earliest possible date, of the conditions necessary for their safe return.

- ***Anti-Semitism***

47. The Russian Federation has a population of 650,000 Jews. This is the third largest Jewish population in the world, and is grouped mainly around Moscow and St. Petersburg.
48. There has been a significant and very welcome revival of Jewish communal and religious life in the last decade. Consistent with the provisions of the new Russian Constitution and the 1990 Law on Freedom of Religions (see paragraph 52), members of the Jewish community are permitted to worship, publish literature and to educate their children. Some of the previously confiscated synagogues have been returned and restrictions on movement lifted.
49. ECRI notes, however, that there remain grounds for concern that severe prejudice and damaging discriminatory practices still persist. The anti-Semitic sentiments which were tolerated for centuries under the Tsarist and Soviet regimes appear now to provide the basis for much of the current extreme nationalist rhetoric. The very desirable liberalisation of speech and association of recent years has also opened the way for the widespread publication and distribution of anti-Semitic newspapers, leaflets and books. As noted in paragraph 43, derogatory racial slurs appear to be used widely in public debate and in the political process, particularly at the municipal level. This reinforces an entrenched social prejudice. One of the practical effects of this can be seen in the disturbing number of cases of synagogue bombings, the desecration of Jewish cemeteries and other crimes.
50. ECRI welcomes the condemnation by the then Russian Prime Minister of two synagogue bombings in 1996. It observes, however, that there have been few prosecutions of criminal incidents which have apparently been prompted by extremist groups and that these do not appear always to have been rigorously investigated, whether at the federal or local level. ECRI takes the view that this situation represents a problem that needs specifically to be addressed by the federal authorities. The question does not seem to ECRI to involve purely legal issues. The present provisions of the Constitution and the Criminal Code seem to provide a sufficient base and justification for action. What is needed is the objective, uniform and systematic enforcement of the law at all the relevant levels - a requirement which ECRI has already noted as relevant also to other issues discussed in this report.
51. At a deeper level, the strength of the prejudice engendered by this legacy of anti-Semitic attitudes is such that they can be challenged, in ECRI's view, only over time and by the concerted efforts of all the major Government figures and institutions of national importance - including bodies of such traditional and national significance as the Orthodox Church. The aim should be to condemn at the highest level all displays of anti-Semitic sentiment and to foster a spirit of greater tolerance.

- ***Religion***

52. ECRI recognises the considerable advances in recent years in establishing the principle and practice of religious freedom in the Russian Federation. It takes favourable note of the relevant constitutional provisions - specifically: Article 28 which guarantees freedom of conscience and freedom of religion; Article 14 which recognises the equality of

religious associations before the law and separates church and state; and Article 19 which enshrines the principle of protection against discrimination on the grounds, inter alia of attitudes towards religion. This degree of constitutional protection was preceded by the law of December 1990 on religious freedom, since when there has been a considerable revival in religious activity.

53. ECRI, however, shares the international concern about recent legislative developments which seem to have the potential for undermining the principle of equality of religions. In October 1997, the 1990 law was replaced. The new legislation, in effect, distinguishes between "religious organisations" according to whether or not they existed before 1982 and, a third category, "religious groups". Religious organisations which are less than fifteen years old and religious groups are subject to a number of important legal and fiscal disadvantages and from limitations on their activities. In particular, religious groups do not enjoy the status of a legal person (and cannot thus, for example, hold a bank account or own property), and neither religious groups, nor religious organisations deemed less than 15 years old, may publish literature; only individual members of such groups would retain these rights. The law also contains provisions regulating the activities of foreign churches and missionaries.
54. ECRI is aware that there has been considerable debate within the Federation on the merits and effects of this legislation. It notes in particular the worries that have been expressed about the activities of what have been called "totalitarian sects" as well as national political sensitivities and concerns about the position of the traditional churches. ECRI is concerned, however, that the new law is potentially discriminatory and disproportionate to whatever problems it seeks to address. There seem already to be indications that the new law has been regarded as a reason by some local authorities to obstruct the activities of certain religious groups. It has been argued that the law violates in spirit and perhaps in the letter the constitutional safeguards described above, and that it also unfairly disadvantages foreign religious associations. It is the more worrying that the new law is taking effect at a time when a number of Federation subjects - apparently without constitutional challenge by the federal authorities - have passed local laws and decrees which seem to be intended to restrict the work of religious associations, including Islamic sects.
55. The Ministry of Justice issued rules on 16 February 1998 on reviewing applications for state registration of religious organisations. In addition, a special commission has been established by the federal government to monitor the implementation of the law on religion. It is too early to assess the effectiveness of these measures. In view of its concerns expressed above, however, ECRI recommends that the law be amended as soon as possible with the aim of proposing new measures which target legitimate social concerns more directly and which do not in the process damage reputable religious groups or the gains in religious freedom of the last few years. Pending such amendment, ECRI urges the special commission to keep in mind these concerns in its oversight of implementation of the law.

- ***Roma/Gypsy***

56. In comparison with other minority groups in the Russian Federation, the Roma/Gypsy constitute only a small minority¹¹ and hostility towards them may not be as virulent as in

¹¹ According to the government's response to ECRI's questionnaire, there are 152,900 Gypsy/Roma in the Russian Federation.

some other European countries. Nevertheless, Roma/Gypsy are distinctly marked as cultural and racial outsiders, with few institutional connections or lobbies¹². They are often lumped together with other visible minorities (see paragraph 34 above), perceived by the public as engaged in the black market, and as practising chicanery and theft.

57. Even though they are not the only target nationally, there have been reports that in more than one city Roma/Gypsy have borne the brunt of the general envy and resentment of non-Russians, accused for example of exploiting shortages in food and other provisions. In some areas, local hostilities of a non-political character between Russians and Roma/Gypsies have been registered. It has been reported that Russian-Roma/Gypsy conflict is overlooked by the police and local administration. ECRI draws attention to its General Policy Recommendation No. 3 on combating racism against Roma/Gypsies, which proposes a range of legislative and policy measures governments can take. ECRI urges the Russian authorities to distribute this widely among local administrations in areas where Roma/Gypsy live and to encourage its implementation.

- ***Civil society and awareness-raising***

58. The concept of an efficient and fully functioning civil society is an important one in the context of the issues that concern ECRI. In general terms, it denotes the existence, within a political entity, of the attitudes, values and institutions - official or otherwise - which permit free debate on relevant issues and the effective formulation and implementation of policies designed to address them.
59. ECRI welcomes an increased level of activity among NGOs, the statements of intent and guarantees within the Constitution, the emergence of human rights institutions, the development of more focused provisions in the criminal law and the proposals for judicial reform. ECRI has also noted, however, that in many of the areas discussed in this report, there is currently a gap between principle and reality. The institutions and practices that are emerging, moreover, are doing so in the context of uncertainty in constitutional relationships and against a hostile historical background. ECRI concludes that the foundation stones of a civil society are not yet all present. ECRI hopes, however, that the progress that has been made so far represents a firm pointer to the future.
60. As part of this process, and given the public and political hostility towards certain groups, ECRI considers it essential that further measures should be taken, in particular by the mass media, to raise public awareness of the issues of racism and intolerance and to improve tolerance towards all groups in society. In this respect, politicians and other public figures in particular should play an important role in shaping public opinion and in avoiding expressions which may lead to sentiments of intolerance, xenophobia or anti-Semitism.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Russian authorities on 26 March 1996.

ECRI accepts no responsibility for the data below.

¹² ECRI notes, however, that there is Roma/Gypsy representation on the Consultative Council on national cultural autonomies (see paragraph 7).

Russians: 119,865,946; Tatars: 5,552,096; Ukrainians: 4,362,872; Chuvash: 1,773,645; Bashkirs: 1,345,273; Belorussians: 1,206,222; Mordvins: 1,072,939; Chechens: 898,999; Germans: 842,295; Udmurts: 714,833; Maris: 643,698; Kazakhs: 635,865; Avars: 544,016; Jews: 536,848; Armenians: 532,390; Buryats: 417,425; Ossetes: 402,275; Kabardins: 386,055; Yakuts: 380,242; Kargins: 353,348; Komi: 336,309; Kumyks: 227,163; Lezghins: 257,270; Ingush: 215,068; Tuvans: 206,160
Other ethnic groups number under 200,000 members, many under 50,000.

Population of the Russian Federation: 147,608,800 (1 January 1996) This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

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