

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

Adopted on 8 December 2011¹

¹ Any developments which occurred after 3 June 2011, date on which the response of the Hungarian authorities to ECRI's request for complementary information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

INTERIM FOLLOW-UP RECOMMENDATIONS

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 2007², 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.

² CM/Del/Dec(2007)986/4.1.

1. *In its report on Hungary (fourth monitoring cycle) published on 24 February 2009, ECRI strongly recommended that the Hungarian authorities keep the adequacy of the criminal law provisions against racist¹ expression under review. It strongly recommended that they take into account international standards in this respect, including the recommendations on criminal law provisions contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, according to which the law should penalise racist acts including public incitement to violence, hatred or discrimination as well as public insults, defamation or threats against a person or a grouping of persons on the grounds of their "race", colour, language, religion, nationality, or national or ethnic origin. It recommended that the authorities pay special attention in this regard to ensuring that, in so far as these standards may mean imposing certain limits on the freedom of expression, these limits are interpreted in line with Article 10 of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights. ECRI further recommended that the Hungarian authorities take measures to increase awareness among judges of international standards against racist expression.*

ECRI notes with interest that since its report, some amendments have been introduced into Hungary's Criminal Code that may help to strengthen the fight against racism. In particular, Parliament has amended Art 174/B of the Criminal Code so that it prohibits assault against a person not only because he or she is (or the offender presumes he or she is) a member of a national, ethnic, racial or religious group, but also if he or she is (or the offender presumes he or she is) part of "certain groups of the population". Holocaust denial is also now a criminal offence in Hungary² and a new offence of participating in the activity of a disbanded civil organisation has been introduced. In addition, following two judgments of the Constitutional Court striking down as unconstitutional certain amendments made to the Criminal Code to broaden the grounds on which the prosecutor could launch an investigation into certain forms of racist expression³ and amendments made to the Civil Code to increase protection against hate speech⁴, Parliament enacted new legislation under which conduct violating the human dignity of a person belonging to a group defined by national or ethnic affiliation, religious conviction or sexual orientation may give rise to civil law protection⁵. However, this Act was also referred to the Constitutional Court – whose decision is still pending – and has therefore not come into force. As a result, the legal situation as regards (verbal) racist expression has not evolved since ECRI's report and appears unlikely to have changed following the entry into force of a new Constitution in Hungary in 2011.

As regards hate speech, therefore, ECRI remains concerned that only its most extreme forms, i.e. incitement liable to provoke immediate violent acts, are currently outlawed under the Hungarian Criminal Code. Bearing in mind the possible links between hate speech and racist acts, it considers this situation especially worrying in a context where the overall climate appears to have become increasingly intolerant and violent racist attacks, targeting Roma in particular, have occurred.

ECRI regrets that despite the efforts made to enact legislation that would provide better protection against racist expression, its recommendation above has not yet been implemented. It emphasises that unless this situation changes, most hate speech will

¹ In line with the definitions set out in ECRI's General Recommendation No. 7 on national legislation to combat racism and racial discrimination, all references to these phenomena include grounds such as "race", colour, language, religion, nationality or national or ethnic origin.

² Provisions enacted on 22 February 2010 (in force 10 April 2010). The text has since been amended and the present text has been in force since 24 July 2010.

³ Decision No. 236/A/2008. AB, referred to in ECRI's report (§ 10); see also ECRI's report (§ 10) for details of the legislation in question.

⁴ Decision No. 96/2008 (VII. 3.) AB.

⁵ Bill No. T/6219, passed on 10 November 2008.

continue to be unpunishable under Hungarian law and its targets will continue to lack adequate legal protection against incitement to hatred. ECRI notes with particular concern that the Hungarian Constitutional Court does not balance the protection against incitement to hatred and the freedom of expression in the same way as the European Court of Human Rights.

2. *In its report on Hungary (fourth monitoring cycle), ECRI strongly recommended that the Hungarian authorities introduce an independent monitoring system at national level to ensure the compliance with centrally enacted legislation of measures taken by school maintainers; this system should in particular be instrumental in ensuring that the prohibition on segregation is respected in practice.*

ECRI notes that since its report, the 1993 Public Education Act has been amended⁶ so as to require local authorities to adopt a public education equal opportunity plan, which is a pre-requisite for any participation in tenders for additional public funding. The Educational Authority examines compliance with the statutory requirement of equal treatment and can impose sanctions where a public educational institution fails to comply. The Equal Treatment Act has also been amended and since 2010 it has been an obligation for local governments to have an equal opportunity plan. Under section 63(3)(b) of the Act, particular attention must be devoted, in drawing up such plans, to the prevention and elimination of unlawful segregation in education and training and to measures to ensure equal access in these fields. Sections 63/A(4) and (5) of the Act provide for regular review of the adequacy of these plans and for the participation of equal opportunity experts in drafting, evaluating and revising the plans.

ECRI welcomes these developments but considers that they are at best a partial response to the recommendation above and is especially concerned that they are yet to prove effective in practice in eliminating segregation in schools. It is, for example, not clear what body is responsible for monitoring the implementation of equal opportunity plans in practice. There also still appear to be significant structural shortcomings regarding the supervision of school maintainers. As ECRI understands it, the essence of the problem remains the absence of an effective central inspection system, largely due to the failure to resolve questions surrounding their compatibility with the Hungarian model of local autonomy. ECRI is deeply concerned that, according to Ministry of Education figures, there were 3000 Roma pupils in segregated classes in 2010. It once again stresses the importance of ensuring that school maintainers' performance with respect to national equality standards is effectively monitored in practice and, recalling that segregation is one of the worst forms of racial discrimination, emphasises the need to act swiftly and decisively to eliminate segregation in education.

3. *In its report on Hungary (fourth monitoring cycle), ECRI reiterated its recommendation that ways of measuring the situation of minority groups in different fields of life be identified, stressing that such monitoring is crucial in assessing the impact and success of policies put in place to improve the situation. Such monitoring should also take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination, should be carried out with due respect to the principles of data protection and privacy and should be based on a system of voluntary self-identification, with a clear explanation of the reasons for which information is collected.*

ECRI notes that under Hungarian law, no one can be obliged to identify him- or herself as having a particular national or ethnic origin, although the exercise by a person of a given minority right may be conditional upon making a declaration for that purpose. ECRI observes that this approach is entirely compatible with its own view that ethnic

⁶ With effect from 3 July 2008; see section 105 of the Act.

data collection should be based on a system of voluntary self-identification, confidentiality and informed consent. ECRI moreover welcomes the publication in November 2009 by the Parliamentary Commissioners for Data Protection and for the Rights of National and Ethnic Minorities of a joint report on processing ethnic data, which found that “the existing formally correct, apparently ‘colour-blind’ approach cannot be maintained in the future” and made a number of proposals for change⁷. It also notes that new methodological tools were applied as part of the 2011 census, carried out from 1 to 31 October 2011, with the stated intention of making it easier for individuals to indicate their ethnic origin, and second, that the authorities are working on devising ways of developing data collection systems and are planning to conduct detailed research into the situation and exclusion of Roma communities alongside other socially disadvantaged groups, in order to assist in designing adequate programmes to improve the situation.

ECRI welcomes these developments as a first concrete step towards more effective monitoring of the situation in Hungary as regards racial discrimination.

However, it notes that more needs to be done to ensure that effective monitoring of the situation of vulnerable groups is in place, allowing targeted measures to be put in place to remedy discrimination. It also invites the authorities to evaluate carefully and critically the effectiveness of all new data collection methods used in order to ensure that they both serve their stated aim and meet European data protection standards.

⁷ See <http://www.kisebbsegiombudsman.hu/data/files/183253997.pdf>, pp. 33–43.

