

## **Seminar with national specialised bodies to combat racism and racial discrimination on the issue of ethnic data collection**

**17-18 February 2005  
Strasbourg, Human Rights Building  
Salle de la Direction**

### **EXPLANATORY NOTE**

#### ***Introduction***

National specialised bodies to combat racism and racial discrimination (specialised bodies) are strategic partners for ECRI in the fight against racism, xenophobia, antisemitism and intolerance. Following ECRI's first Seminar with national specialised bodies in November 2003, which dealt with the question of how to best implement legislation for combating racism and racial discrimination, there was a call for a follow-up event which should focus on concrete cases and specific problems. As a result, ECRI decided to organise a follow-up Seminar with national specialised bodies on 17 and 18 February 2005, which will focus on to the issue of ethnic data collection.

National and international bodies involved in the fight against racism and racial discrimination, including ECRI, consider that the collection of data broken down by categories such as nationality, national or ethnic origin, language and religion (ethnic data collection) is essential for shaping sound policies against racism and racial discrimination and promoting equal opportunities. Without data which is as accurate as possible on the situation of the groups of persons to which these policies are aimed, policy-makers can only develop policy in an indirect way and thus run the risk of overlooking the importance or the urgency of problems. At the same time, also data on the actual implementation of national legislation to combat racism and racial discrimination can provide very valuable information on the situation of victims of racism and racial discrimination in a given country. Such data also allows national specialised bodies to develop and suggest policy responses for fighting racism and racial discrimination in a more effective way.

The aim of the Seminar is therefore to provide national specialised bodies with a forum for comparing different national practices in order to identify good practices in the field of ethnic data collection. Special emphasis will be placed on the practical use of data broken down by categories such as nationality, national or ethnic origin, language and religion for the adoption of positive measures and on the establishment of indirect discrimination in complaint procedures. Other important issues that will be explored at the Seminar will be the role of specialised bodies in monitoring the implementation of legal provisions and other measures aimed at combating racism and racial discrimination, as well as the monitoring of racist incidents.

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## ***Participants***

This Seminar will bring together representatives of national specialised bodies to combat racism and racial discrimination, representatives of general human rights institutions (Ombudsman, Human Rights Commissioner, etc.) whose mandate already covers or will be extended in order to cover racism and racial discrimination. Special emphasis has been placed on inviting participants from Member States which already have some experience on the issue of ethnic data collection or in which this issue will have some direct relevance for the near future. Moreover, representatives of international governmental and non-governmental organisations with whom ECRI is closely cooperating on the issue of ethnic data collection will participate in the Seminar.

All attendees will be expected to actively participate in discussions by commenting on interventions, providing examples of the situation in their own country and asking questions on how certain problems are dealt with in other countries.

## ***Programme and structure of the Seminar***

The Seminar will take place over one and a half day. The first day will be spent on the clarification of the concept of ethnic data collection and the legal and political framework of a first set of such data that is data broken down by categories such as nationality, national or ethnic origin, language and religion, which may be collected in specific areas of policy and may be used, for instance, for the adoption of positive measures and for the establishment of indirect discrimination in complaints procedures. The second day of the seminar will deal with the monitoring of the implementation of national legislation aimed at combating racism and racial discrimination and the monitoring of racist incidents.

### **1st Day**

Day 1 will start with a clarification of the concept of ethnic data collection and an explanation as to the reasons why ECRI considers that the collection of data broken down by categories such as nationality, national or ethnic origin, language and religion (ethnic data collection) is important for successfully combating racism, xenophobia, antisemitism and intolerance.

## ***Main issues***

Although it is often recognised that ethnic data is useful, many European countries are still very reluctant to collect such data. This is sometimes due to a lack of understanding of the type of data to be collected, of the guarantees that should govern the collection of this type of data and, more generally, to a fear of the risks of misuse. The aim of the first session of this Seminar will therefore be to give an overview of the different types/sources of ethnic data collection, to address the main concerns related to this issue

and to identify certain principles that must be respected when this kind of data is collected.

### *Different types/sources of ethnic data collection*

In the framework of its country monitoring work and its General Policy Recommendations, ECRI has identified the following different sets of data:

1. base line data broken down by categories such as nationality, national or ethnic origin, language and religion, providing information on the actual size of vulnerable groups and which may be collected in specific areas of policy (e.g. education, employment, housing, access to services).
2. data on the implementation of legal provisions and other measures aimed at combating racism and racial discrimination, including the monitoring of their effectiveness by developing and maintaining systems for recording racist offences and incidences.
3. data collected in the framework of surveys on the perception of discrimination by victims of discrimination, and by the majority population.

This data may be obtained from a wide range of different sources, including censuses and socio-economic statistics conducted by national statistical bodies, administrative files (school, police, health service, social assistance), court statistics (number of complaints, decisions rendered, etc.), record-keeping by Ombudsmen, national specialised bodies and specialised NGOs, employee registers held by companies, victim and attitude surveys and scientific investigations.

A combination of these different data sources can help in providing a picture of the situation of vulnerable groups in a given country that is as accurate as possible. However, it must be clear from the outset that the collection of this sometimes highly sensitive data must be governed by a certain number of principles which would prevent its potential abuse.

### *Principles governing ethnic data collection*

Both national and international data protection norms set the legal framework in which the collection of data broken down by nationality, national or ethnic origin, language and religion is to be conducted. The principles governing the collection of this kind of data vary according to the type of data collected - notably whether the data concerns racial or ethnic origin and religion or other grounds, and whether the data is personal or statistical. Although data broken down, for instance, by nationality (meaning citizenship of a country) or, in many cases by language, does not seem to pose major problems, the collection of data broken down by national or ethnic origin and religion is much more

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controversial. Equally, the collection of personal data, i.e. information relating to an identified or identifiable person is also more difficult than the collection of statistical data that does not identify a particular person. However, it is interesting to note that, for example, for the purpose of proving discrimination generally, only collective and anonymous data which can show patterns and practices is required. Individualised, identifiable information safeguarded by most data protection norms<sup>1</sup> is not necessary. The principles governing ethnic data collection, as also reflected in ECRI's recommendations in this area, usually include:

1. the principle of legality (the collection of data must be authorised by national law);
2. the principle of voluntary self-identification;
3. the principle of confidentiality;
4. and the principle of informed consent.

## ***Ethnic data collection in the Member States – legal and political framework***

National practice concerning the collection of data broken down by categories such as nationality, national or ethnic origin, language and religion varies widely across Council of Europe Member States. Some countries collect data on all of the above-mentioned categories. Other countries only collect data on some of them.

The most persistent and erroneous view in many European countries is that their legislative framework does not allow the collection of data broken down by categories such as nationality, national or ethnic origin, language or religion. Although a comprehensive picture of all relevant legislation in all Member States of the Council of Europe is not available, experience has shown that in most countries, national legislation does not formally prohibit the collection of this type of data, but only restricts it and makes it conditional on the respect of certain safeguards.

One of the aims of the second session of the Seminar will therefore be to identify possible political and legal barriers against the collection of ethnic data and to discuss how they can be/ have been overcome in practice.

### **Questions:**

What is the general climate of opinion with regard to the issue of ethnic data collection in your country (position of different key players, e.g. government, justice system, human rights institutions, national specialised bodies, NGOs, vulnerable groups etc.)?

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<sup>1</sup> see for instance the safeguards provided by the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data or the Council of the European Union Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC).

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Is there an outright prohibition on the collection of data which is broken down by nationality, national or ethnic origin, language and religion (check grounds one by one) in your national legislation?

If not, are there provisions which make the collection of this type of data conditional on the existence of certain guarantees and if yes, please indicate what they are.

Do these prohibitions or safeguards apply only to personal or also to statistical data?

Is there an independent authority responsible for the supervision of the collection of sensitive/ethnic data?

What type of data, among the categories mentioned above (nationality, national or ethnic origin, language and religion), is collected in practice in your country?

What are the most commonly used data sources (census, socio-economic statistics, surveys, court statistics, record-keeping by national specialised bodies or private companies etc.) for the collection of ethnic data in your country?

Who is responsible for collecting ethnic data?

Who does the categorisation and based on what criteria (self-identification, identification by observation, recognition by group or classification by indirect variables)?

Are target groups involved in the data collection process?

What is the collected data used for?

Can you give any concrete examples of measures/actions which have been made possible thanks to this type of data?

Are you aware of any cases where the collected data has been misused?

## ***Ethnic data collection in specific areas of policy***

Ethnic data collection is essential for shaping sound policies against racism and racial discrimination and for promoting equal opportunities as it can reveal the needs and interests which will then form the basis for social policies and later help in evaluating their progress. Having reliable information on the number, concentration, socio-economic situation or specific needs of a minority group can considerably influence policy-making and assist, for example, in setting targets for employment or locating public services (education, health, social benefits etc.).

Countries which collect this type of information in specific areas of policy have usually developed relatively complex anti-discrimination schemes which are complemented by more or less elaborate monitoring systems. Session 3 will take a closer look at the situation in two Council of Europe Member States where this kind of data, which is collected in two key policy areas (education and employment), has had a significant impact on the formulation of more targeted policies in these fields.

## **Questions:**

Is ethnic data collected in specific policy areas in your country?

If yes, what was the historical and philosophical background for the introduction of ethnic data collection in these specific fields?

Which methods and sources for collecting data in the field of employment and education are used in your country?

What kind of legal definitions and classifications are used in the existing monitoring schemes?

Who is involved in the development and the implementation of these monitoring schemes?

What are the existing reporting standards used by schools and companies (e.g. maintenance of special files)?

Which institutions are responsible for analysing the collected data and for suggesting adequate policy responses thereafter?

Can you give examples of equality programmes that were implemented on the basis of collected data?

Has there been any observed progress following the adoption of measures based on ethnic data?

### ***Ethnic data collection as a tool for positive action for national specialised bodies to combat racism and racial discrimination***

In order to achieve substantive equality, it is sometimes necessary to adopt special measures (sometimes also referred to as “positive action”) for certain vulnerable groups in order to take into account past or current disadvantages or the fact that there is a lack of equal opportunities.

Both qualitative and quantitative data is necessary for the development and implementation of positive action schemes. To begin with, measures taken in the context of positive action should be based on a quantitative and qualitative analysis of the situation.

The positive action programmes usually consist of voluntary programmes involving quantified objectives aimed at a fair representation of protected groups although they sometimes even go so far as to establish access quota and preferential treatment for certain groups and to impose sanctions when quantitative objectives have not been reached.

National specialised bodies can have an important role both in the development, as well as the implementation and monitoring of positive action schemes which should ideally rely on reliable and accurate ethnic data.

### **Questions:**

Are positive action programmes considered to be a legitimate tool for achieving equality in your country and have such programmes been implemented in practice? If yes, in which areas?

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Has your organisation been involved in the development of a positive action programme and in the monitoring thereof?

What are the challenges involved in the collection of ethnic data for the implementation of positive action programmes?

Are existing positive action programmes assessed and evaluated on a regular basis in your country? If yes, what has been the outcome of this evaluation?

Can you provide examples of “good practices” in relation to data collected for the purpose of developing and monitoring positive action programmes?

## ***Ethnic data collection as a tool for establishing indirect discrimination***

According to ECRI's General Policy Recommendation No.7, indirect discrimination occurs “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”.

The recognition of the concept of indirect discrimination lies at the very heart of every anti-discrimination scheme as it allows a genuine revision process of practices and procedures which, although apparently neutral, have a significantly negative impact on persons belonging to a protected group. However, the impartiality of practices and procedures is often very difficult to assess and statistical data is often the only way of showing the underlying picture. For example, by allowing statistical evidence in legal proceedings, courts can punish those who implement measures which disproportionately affect certain categories of persons who are protected from discrimination, whether or not this impact was foreseeable and whether or not it was calculated or intended. The use of statistical data which is broken down by categories such as nationality, national or ethnic origin, language or religion can therefore be extremely valuable in proving indirect discrimination before the courts and other complaint mechanisms.

## **Questions:**

Does the concept of indirect discrimination exist in your domestic legal order?

Is the use of statistical evidence allowed in legal proceedings in your country?

What is the existing case-law with regard to the proof of indirect discrimination in your country?

Can you give examples of concrete cases in which ethnic data has helped in establishing indirect discrimination in legal proceedings?

**2nd Day**

On Day 2, the issues of monitoring the implementation of national legislation in force aimed at combating racism and racial discrimination and the monitoring of racist incidents will be discussed.

## ***Monitoring the implementation of national legislation to combat racism and racial discrimination***

If a comprehensive legislative framework for combating racism and racial discrimination is put in place, data on the implementation of national legislation to combat racism and racial discrimination can provide very valuable information on the situation of victims of racism and racial discrimination in a given country. This kind of data can also be a good indicator of whether or not existing policies for fighting racism and promoting equal opportunities are having a positive effect.

In the framework of its country-by-country monitoring, ECRI consistently recommends that the following information be recorded: the number of complaints under criminal and civil law, details of any investigations carried out, prosecutions initiated and the outcomes of such complaints in terms of any decisions rendered and/or redress or compensation awarded. National specialised bodies can have an important role in collecting/analysing this kind of information/data.

### **Questions:**

Is there a comprehensive legislative framework for combating racism and racial discrimination in your country?

Which institutions are responsible for dealing with complaints about violations of this kind of legislation in your country?

Is the monitoring of the implementation of legislation to combat racism and racial discrimination part of your mandate and/or are there other institutions involved?

Are there differences in the monitoring system for civil and criminal law provisions to combat racism and racial discrimination in your country?

What kind of information should be recorded as a minimum in order to measure the effectiveness of existing legislation for combating racism and racial discrimination?

In which areas (e.g. employment, education, housing, criminal justice, health and social services, immigration policy, access to public places) are legal complaints most frequent?

In your opinion, are the potential victims of racism and racial discrimination aware of the existing legal remedies for their protection?

Have you observed an increase in the number of complaints in recent years and if so, what are, in your opinion, the reasons for this increase?

Do you consider that the outcomes of complaint procedures are usually satisfactory from the point of view of the victims?

Have there been concrete policy responses following the analysis of the collected data?

## ***Monitoring racist incidents***



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In the framework of its country monitoring work and its General Policy Recommendations, ECRI regularly underlines the importance of monitoring racist incidents by developing and maintaining systems for recording incidents of racism, antisemitism, intolerance and discrimination. Such monitoring systems might be operated by national specialised bodies or by civil society institutions and other appropriate institutions, including the police and prosecuting authorities, which should set up and maintain systems for monitoring, classifying and recording racist incidents which are brought to their attention.

Very few Council of Europe Member States have a centralised monitoring system which ensures that racist incidents are reported and recorded in a consistent manner. In practice, information on racist incidents is collected by a variety of different players including NGOs, national specialised bodies, Ombudsmen, different Ministries, the courts and the police. There also seems to be no common understanding of what constitutes a racist incident and collected data/information includes different sorts of incidents of racist violence, intimidation, harassment and discrimination, which might or might not be followed up by concrete legal action. ECRI therefore strongly encourages the development of common standards in this field.

## **Questions:**

What type of data on racist incidents is collected in your country?

Is there a common definition of what constitutes a racist incident in your country?

Which institutions are involved in monitoring racist incidents in your country?

Is data on incidents of racist violence, intimidation, harassment and discrimination collected on a uniform basis in your country?

Do you consider that the monitoring of racist incidents which is currently in place in your country provides an accurate picture of the situation in your country? If not, what could be done to ensure that it does?

## **Documentation**

ECRI's position on ethnic data collection (CRI-GT-CS (2004) 11).

Report on the consultation meeting with international NGOs on the issue of ethnic data collection (CRI (2004) 51).

[ECRI General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance.](#)

[ECRI 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.](#)

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[Comparative Study on the Collection of Data to Measure the Extent and Impact of Discrimination in a Selection of Countries by Mr Patrick SIMON, \*Institut National d'Etudes Démographiques \(INED\)\*.](#)

Ethnic Monitoring: a Guide for Public Authorities by the Commission for Racial Equality (CRE).