

Council of Europe Secretariat

Directorate of Internal Oversight



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**FINAL REPORT
EVALUATION OF THE EUROPEAN COMMISSION AGAINST
RACISM AND INTOLERANCE – ECRI**

- EXECUTIVE SUMMARY -

ECRI is a monitoring body which performs well in many respects. It is unique and well respected.

ECRI's country reports are well known, their quality is generally assessed as good – or even very good – depending on the specific sub-criteria considered. However, they often contain too many recommendations and some of them are not specific enough. This aspect impacts on their implementability. Furthermore, commitment to implementing recommendations is uneven among countries. The General Policy Recommendations are less well known and less used, although they are considered to be quality texts.

ECRI's mandate allows for adaptation, being sufficiently broad and specific.

Effectiveness can be increased by (inter alia) adopting a system for monitoring the implementation status of ECRI recommendations; assessing and consolidating collaboration with the Framework Convention on the Protection of National Minorities (FCNM); and adopting other measures complementing the “interim procedure” introduced to facilitate implementation of recommendations.

The reconsideration of the mechanisms for the election of members; the maximum length of their term of office; and the adoption of processes aiming at enhancing the independent profile of Members are measures that can further enhance the effectiveness of the work of ECRI.

Background

1. The European Commission against Racism and Intolerance (ECRI) is a Council of Europe (CoE) monitoring body established in October 1993. Under its Statute, ECRI is “*entrusted with the task of combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance in greater Europe from the perspective of the protection of human rights, in the light of the European Convention on Human Rights, its additional protocols and related case-law*”.
2. Given the importance of monitoring mechanisms in the CoE organisational reform, the topical subject-matter highlighted in the Report of the Group of Eminent Persons of the Council of Europe (issued in May 2011) and the interest of ECRI members in improving working methods through the establishment of a dedicated working group, the Directorate of Internal Oversight (DIO) of the Council of Europe decided to undertake an evaluation of ECRI as part of its 2011 work plan, and was assisted in this by an independent senior evaluator.
3. The objective of the evaluation was to assess ECRI's effectiveness, and added value compared to other players working in the same or similar areas; and to understand whether the mandate, election mechanisms and working processes of ECRI are functional to the objective of achieving effectiveness of the activities of the monitoring body.
4. The evaluation was based on a mix of secondary and primary sources of evidence. Data were collected by the following means: a desk review of relevant documents; interviews with selected ECRI members, Permanent Representations to the CoE, National Liaison Officers (NLOs), the ECRI Secretariat and other CoE officials; interviews conducted during country visits to Hungary and Georgia with national administrations, civil society representatives, bilateral and multilateral donors and independent researchers; and an on-line survey targeting key ECRI stakeholders in all the CoE member states.

Effectiveness

5. The quality of ECRI reports was considered in the light of eight different criteria; there is sufficient evidence to conclude that their quality can be considered as good or very good under several criteria.
6. ECRI's objective is to encourage changes in the CoE member states, but it has no power to make changes happen. The other major factors driving the changes recommended by ECRI are media attention, civil society activities, national policy debate, political lobbying and the EU accession process.
7. "Implementability" of recommendations could be enhanced by reducing their number per country and defining the timescale for their implementation, particularly for those recommendations with a medium-term perspective. A further option for enhancing the value of ECRI reports may be the inclusion of cross-references to evidence collected (unless confidentiality suggests otherwise).
8. No system for monitoring the implementation status of ECRI recommendations in the different member states is yet in place. Such a system could be established, but clear and specific preconditions would have to be met. The validity of the findings originating from this monitoring system would have to be regularly assessed, as the mechanism envisaged might work at different speeds for different countries.
9. The absence of such a monitoring system makes it impossible to gain a sufficiently detailed understanding of the use made of ECRI reports; however, there are indications that ECRI reports are generally used for their intended purpose and produce effects mainly on law and policy making, institution building, the adoption of action plans and further research. Based on ECRI reports established for each country however, the use of reports is uneven and some countries are much less committed than others in following up ECRI recommendations.
10. The General Policy Recommendations (GPRs) are less well known and more rarely used than the country reports, although they are regarded as quality texts by ECRI stakeholders.
11. There is no conclusive evidence to suggest that the products of ECRI's work are used systematically in the planning of CoE co-operation activities for the member states. However, some co-operation activities help to raise awareness of ECRI's mission and activities; ECRI has working ties with some CoE operational departments and co-operation and exchanges take place at different levels. The European Court of Human Rights increasingly refers to ECRI recommendations in dealing with a number of cases.
12. An "interim procedure" (selection of three top-priority recommendations for urgent implementation, for each country visited) was recently introduced to address the problems deriving from the very large and increasing number of recommendations made in ECRI country reports, which made implementation by member states more challenging. However, the adoption of the "interim procedure" cannot by itself solve the problems caused by the large number of recommendations issued by ECRI. The results of the application of the "interim procedure" - once it has been applied in a larger number of countries - will have to be carefully assessed.

Mandate, structure, membership, working methods

13. Based on findings, the mandate of ECRI is consistent with the monitoring body's objective of countering racism and intolerance in Europe; it is, at one and the same time, sufficiently specific to permit clear identification of its mission and sufficiently broad for the monitoring of new or emerging threats to be included in its field of action.
14. However, if ECRI decides to take on additional tasks, adequate resources may be necessary to support the ECRI Secretariat in order to ensure the continued provision of effective professional support.
15. ECRI's two-pillar structure (members and Secretariat) is consistent with the body's statutory tasks. The very large size of its membership is not a cause for concern given that a substantial proportion of ECRI's work is performed by smaller bodies such as the Country-by-Country (CBC) groups, the Bureau and specific working groups. However, there is demand for considering a reallocation of responsibilities within ECRI by shifting some additional duties to the Bureau and the working groups.
16. ECRI and the FCNM are experimenting with some significant forms of co-operation, which could lead to structured exploitation of synergies between these bodies. This is apparently the first case of operational co-operation between different CoE monitoring bodies, which should make it possible to achieve greater internal co-ordination.
17. Members of ECRI '*shall have high moral authority and recognised expertise*'; '*shall serve in their individual capacity, shall be independent and impartial in fulfilling their mandate. They shall not receive any instructions from their government.* In order to achieve this objective the present appointment mechanism – which gives member states the power to select members – already includes safeguards by assigning a power of rectification to the CoE Committee of Ministers (CM). However, the system could be improved by adopting processes in use in other monitoring bodies of the Council of Europe such as the FCNM, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Charter for Regional or Minority Languages (ECRML), whereby each CoE member state preselects a shortlist of 2-3 candidates, from which the CM selects the national member after seeking the opinion of the Bureau.
18. The process could be further strengthened in terms of outreach through the adoption, by member states, of a system of open calls for candidatures based on the model in use for the appointment of CPT members and the judges of the European Court of Human Rights (ECtHR).
19. The report remarks that, while the Statute specifies that members "*shall be independent and impartial in fulfilling their mandate*", no definition of independence and impartiality is given. This could lead to different interpretations of these prerequisites, which are essential to the proper functioning and reputation of ECRI. The report therefore recommends the adoption of a clear definition of both independence and impartiality.
20. The present indefinite term of office favours continuity over the need to inject fresh energies and innovative styles of work into the ECRI membership. The establishment of a different balance

between these two equally valuable principles is recommended, by setting the term of office at five years, with one possible reappointment.

21. Working methods could be enhanced through the inclusion of standards of conduct in the ECRI Rules of Procedure to stimulate full participation by all members.

Added value and co-ordination with similar bodies

22. ECRI is a unique body with very specific characteristics if compared with other international organisations such as the Office for Democratic Institutions and Human Rights (ODIHR), the Committee on the Elimination of Racial Discrimination (UN-CERD) and the European Union Agency for Fundamental Rights (FRA). The respective mandates of ECRI and the other organisations are complementary and there is evidence of collaboration at the political and operational levels.