

## Intergovernmental Conference

### *LINGUISTIC INTEGRATION OF ADULT MIGRANTS: TOWARDS THE EVALUATION OF POLICY AND PRACTICE*

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Council of Europe

## Contribution by the European Commission against Racism and Intolerance (ECRI)

### INTRODUCTION TO ECRI

ECRI, the „European Commission against Racism and Intolerance“, is the human rights monitoring body of the Council of Europe specialised in combating racism and racial discrimination. It is composed of independent experts from the 47 member States of the Council of Europe. ECRI's action covers all the measures needed to combat violence, discrimination and prejudice against persons or groups of persons on grounds of race, colour, language, religion, nationality or national or ethnic origin.

#### **Statutory activities**

ECRI has three main statutory activities: (1) the preparation of country- monitoring reports, (2) the adoption of General Policy Recommendations and (3) awareness-raising activities.

First, ECRI monitors all members States of Council of Europe. The work takes place in 5-year cycles, covering 9/10 countries each year. ECRI reports deal with a very broad range of subjects. These include the legal and institutional framework to combat racism and racial discrimination – the existence and scope of constitutional, civil, administrative and criminal law provisions and the existence of independent national bodies specialised in the fight racism and racial discrimination. Other areas ECRI covers are education, employment, housing, access to services and fields such as the public and political debate concerning ethnic minorities, policies in the field of asylum, questions relating to immigration, etc. ECRI also looks at the situation of specific groups that are particularly vulnerable. The fourth-round of country monitoring work which started in 2008 focuses on implementation of the main recommendations made to governments in the third reports.

The reports contain recommendations addressed to governments. They are not binding recommendations of course, but it's important to note that they are increasingly acquiring a soft-law status. ECRI refrains from comparing States, but has shown that racism exists in every state.

Second, drawing from this observation, ECRI adopts General Policy Recommendations. These concern specific issues<sup>1</sup>. They provide guidelines to policy-makers and are increasingly used when new laws or policies are devised.

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<sup>1</sup> ECRI GPR N°1: Combating racism, xenophobia, antisemitism and intolerance; ECRI GPR N°2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level; ECRI GPR N°3: Combating racism and intolerance against Roma/Gypsies; ECRI GPR N°4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims; ECRI GPR N°5: Combating intolerance and discrimination against Muslims; ECRI GPR N°6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet; ECRI GPR N°7: National legislation to combat racism and racial discrimination; ECRI GPR N°8: Combating racism while fighting terrorism; ECRI GPR N°9: The fight against anti-Semitism; ECRI GPR N°10:

ECRI's third statutory activity is civil society work. ECRI believes that the fight against racism and racial discrimination cannot be solely a top-down process, but needs to include civil society. ECRI conducts activities to involve and empower civil society actors in all Council of Europe member States. Concretely, this includes national Round Tables (the last one has been held in Berlin in May) and thematic seminars with national specialised bodies to combat racism and racial discrimination.

ECRI sees its role as that of providing constructive assistance to governments, not "naming and shaming".

One last piece of information which is worth mentioning is that ECRI is not based on a convention. This makes it different from other monitoring bodies of the Council of Europe you might be aware of, such as the Committee of Experts of the European Charter for Regional or Minority Languages. The advantage is that ECRI has greater flexibility to adapt to the changing concept of racism.

## **POSITIVE MEASURES TO FOSTER THE LINGUISTIC INTEGRATION**

This conference deals with "the linguistic integration of adult migrants". I will try to outline briefly ECRI's approach to integration and integration measures, which more and more often become compulsory.

### ***Definition of integration***

ECRI understands integration as a two-way process involving efforts from the majority population as much as from the minority. The aim is to achieve an integrated society in which there is mutual recognition between all groups. It is obvious that language is a fundamental part of integration, as it is through communication that misconceptions and stereotypes can be removed and ties can be created. At the same time, migrants should in no way feel pressured to abandon their cultures and languages – integration does not mean erasing differences.

### ***Positive measures***

Integration encompasses also a duty for the State to become active. The national authorities must ensure equal rights and dignity for all. This means that they must combat discrimination, amongst others by prohibiting discrimination in the law. ECRI believes that States should explicitly state that discrimination on the ground of language is not accepted. At the same time, mere prohibitions are not enough to allow migrants to become effectively involved in society. Therefore, national authorities should take positive measures. These are temporary legal or policy measures to remedy a situation where migrants de facto have fewer possibilities than the majority, for instance because they do not speak the official language. In other words, positive measures aim at reducing factual inequalities so that migrants have the same opportunities as the majority population and can fully participate in all areas of life.

### ***Language lessons***

It is not difficult to imagine that factual inequality arises out of immigrants' inability to speak the official language. They have fewer chances on the labour market, in schools, in all fields of life, which of course hampers their integration. Discrimination on the ground of language is extremely common. Therefore, ECRI demands in a number of country reports that the authorities provide opportunities for migrants, but also refugees<sup>2</sup> and asylum seekers<sup>3</sup>, to

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Combating racism and racial discrimination in and through school education; ECRI GPR N°11:  
Combating racism and racial discrimination in policing; ECRI GPR N°12: Combating racism and racial  
discrimination in the field of sport.

<sup>2</sup> Recent examples: Slovakia, Estonia

<sup>3</sup> Recent examples: Slovakia, Hungary

learn the national language. For all of them, what is at stake is their capacity to relate to the people surrounding them.

In various recent reports, ECRI outlined the prerequisites for language lessons to immigrants: They need to be of good quality and be available in all regions of the country concerned. In addition, the language courses should either be free or cheap – otherwise some immigrants could be discouraged to enrol.<sup>4</sup>

### ***Interpretation and translation of documents***

While language courses to immigrants are very important, this is not enough to remove all difficulties caused by the language barrier in public life, especially as learning a language requires time. In its country reports, ECRI has noted that the incapacity of civil servants to communicate with immigrants or asylum seekers can result in misunderstandings, tensions and, in the worst case, uninformed decisions. It has therefore recommended in a number of cases that civil servants dealing with immigrants or asylum seekers themselves be provided with language classes or interpretation.<sup>5</sup>

At the same time, ECRI states that all relevant written information documents should also be published in the main languages spoken by immigrants. One concrete example is ECRI's recommendation to provide an information booklet on the anti-discrimination law in a country in various different languages to ensure that migrants, who are particularly vulnerable to discrimination, are aware of their rights and the procedure to get redress<sup>6</sup>.

## **OBLIGATORY INTEGRATION MEASURES**

ECRI cannot overemphasise the importance of immigrants' learning the language of the country in which they reside. In its reports, ECRI praises initiatives encouraging language learning.

### ***Definition of duty to integrate***

However, ECRI has observed a shift in policies in the context of recent "integration debates" taking place in many countries: Language classes are no longer presented as an offer to facilitate integration, but as a requirement to be accepted in society. In many European States, immigrants must now pass language exams to obtain certain rights or benefits. In public discourse, this is often presented as migrants' "proof of their will to integrate". Many States move from a concept of the "right to integrate" to the "duty" or even the "(statutory) obligation to integrate". This means that in an increasing number of States, migrants have access to rights only on the condition that they comply with integration measures.

In its country monitoring work, ECRI has come across a number of different requirements: In some cases, migrants have to take language tests and reach certain levels, sometimes they are obliged to pass exams in civic education; in some cases they must only prove that they have taken part in such courses. (I will now only focus on language courses and tests).

### ***Problems***

For ECRI, these new policies pose obvious problems:

First, they may be discriminatory. How do States select the groups of people who must take language tests or comply with similar requirements? Several EU/ European Economic Area States put stronger obligations on non-EU/EEA citizens. This differential treatment can be justified by the free movement of people and freedom of establishment within the EU/EEA<sup>7</sup>.

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<sup>4</sup> Recent examples: Estonia, Belgium, Switzerland, Norway

<sup>5</sup> Recent examples: Greece, Bulgaria

<sup>6</sup> Germany;

<sup>7</sup> In its fourth report on Norway (paras. 107 and 110), ECRI questioned differential treatment between EU/EEA citizens and non-EU/EEA citizens in relation to integration courses; however, this should not be considered as ECRI's general position on these issues. See CRI(2009)10 p. 7

At the same time, it is difficult to defend differential treatment between nationals of different third countries. ECRI applies strict standards when it has to evaluate whether differential treatment is necessary and proportional. For instance, for ECRI it is not acceptable only to subject nationals of countries with a certain level of economic or political development to integration measures<sup>8</sup>, or nationals of member States of the International Islamic Conference<sup>9</sup>.

Second, even if all non-nationals are under the equal obligation to take a language test in order to obtain access to certain rights, ECRI has strong doubts whether sanctions are the right way to achieve the aim of integration. In other words, it is not always convinced that forfeiture of rights (which clearly is a sanction) is necessary and proportional.

Third, for ECRI obligatory integration measures, such as language tests, often serve to stigmatise immigrants in the minds of the majority, without helping them to integrate. In other terms, they can be counterproductive: Instead of fostering integration, they legitimise exclusion of those who fail the test.

### ***Precautions***

In its reports, ECRI has asked States to take a number of precautions *if* they introduce obligatory integration measures: The State must monitor whether the measures are actually useful and have in fact led to better integration. This requires the collection of meaningful data, as integration is a subjective and vague concept that is not easily measurable. In addition, States must demonstrate that the introduction of the test did not discourage persons from applying for a right in the first place. As an example, even if 99 per cent of applicants have passed the language examination, there might be a number of persons who have not enrolled and thus remain excluded from a right. If States opt for language tests, they must be transparent and there must be an appeal procedure open for those failing the test.

In recent reports, ECRI has examined language requirements in a number of fields:

### ***Access to social benefits***

ECRI has examined a case<sup>10</sup> in which persons applying for social housing or tenants of social housing had to demonstrate their willingness to learn the official language (and participate in an integration programme). Those failing to “prove their willingness” – which is a very vague provision – could ultimately be barred access to social housing or their rights could even be withdrawn. One of the aims pursued by this regulation was that of integration.

Generally, ECRI has strong doubts about measures which provide for differential treatment in relation to social rights between persons who lawfully reside in a country. Even if they pursue a legitimate aim, they are often disproportionate, in which case they are discriminatory. In the case at hand, ECRI asked the authorities to review their legislation and to provide incentives to learn the language rather than sanctions.

### ***Residence permits***

For ECRI it is problematic to link the issuance or prolongation of residence permits to language examinations, as, of course, the ultima ratio sanction – withdrawal of a residence permit – has particular serious consequences for an individual. Here the risk of disproportionality becomes visible – whenever dealing with obligatory integration measures and language tests, the authorities must bear in mind that what is at stake for persons having to comply with the obligatory integration measures is their right to lawfully reside in a country.

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<sup>8</sup> See CRI(2009)10 Guidelines for dealing with issues related to integration and non-discrimination in ECRI's country-by-country monitoring work

<sup>9</sup> Germany; this regulation only concerned one Land (Baden-Württemberg) and had been abrogated by the time of ECRI's report.

<sup>10</sup> Belgium

ECRI recommends that if a State opts for language requirements, it should ensure that immigrants receive actual support to be able to pass the examination.

### **Family reunification**

There are debates in several States over a possible requirement for persons applying for family reunification to take language tests before entering the country. Some States have already introduced such regulations.

ECRI is not convinced that integration is facilitated by such measures.

- In fact, the obligation to prove one's language proficiency prolongs the period during which family members are separated, which hampers integration of the family member already present in the country of destination.
- There may be serious difficulties regarding the access to quality language courses in the country of origin. ECRI has dealt with cases where language courses were provided online. This obviously excludes persons from regions lacking the appropriate infrastructure from benefitting from such offers. Language schools are often set up only in urban areas.
- Language lessons in the country of origin can be expensive and thus have a strong dissuasive effect.
- Lessons may be more efficient in a country where the language is actually spoken.

This makes it clear that such language tests in the countries of origin could have a counter-productive effect by creating a feeling of alienation or by making it impossible for immigrants from certain regions to come to the country. ECRI recommended in its reports that States pay due attention to these preoccupations when introducing such language requirements.<sup>11</sup>

### **Naturalisation**

It is very common for States to require command of the national language for naturalisation. Citizenship creates a strong feeling of belonging, as only nationals can benefit from all political, social and economic rights. Therefore, ECRI believes that there should be a reasonable possibility to obtain citizenship. The requirements for naturalisation should be proportionate. Also, persons applying for citizenship should be given effective assistance to be able to pass the examination.<sup>12</sup>

### **Conclusion**

Generally, ECRI believes that States should perceive and present language lessons as an opportunity to help immigrants to participate fully in society, to become members of society who feel that their equal rights and dignity are protected. If States introduce obligatory integration measures, they should not be misperceived by the majority as stigmatising newly-arrived persons. Even if public integration measures are not intended to stigmatise immigrants, if they are perceived differently by their target audiences, the implementation of integration policies will not go smoothly.

It is ECRI's position that authorities should not impose disproportionate language requirements regarding residence permits. As regards social rights, in ECRI's view there should be no requirements based on language as this could amount to discrimination.

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<sup>11</sup> Recent examples: Germany and France

<sup>12</sup> Recent example: Estonia