

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

## **ECRI's Round Table in Germany in co-operation with the German Institute for Human Rights**

**12 May 2010  
NH Hotel Berlin-Friedrichstrasse 96  
10177 BERLIN**

**MS GUDRUN HOLGERSEN, MEMBER OF ECRI**

Ladies and Gentlemen,

It is a great pleasure and honour to be able to participate in ECRI's Round Table here in Berlin, and to have an opportunity to present and discuss with you some of the main conclusions and recommendations made by the European Commission against Racism and Intolerance (ECRI) in its fourth report on Germany.

This report was adopted by ECRI on 19 December 2008 and published on 26 May 2009. Almost a year has thus passed since the publication of the report, but most of ECRI's findings and recommendations contained in the report are as valid today as they were then.

Since the publication of the report, we have learned that some of the recommendations are in the process of being implemented, although there are still some issues of concern. This round table therefore comes at a timely moment. We know that the German authorities are committed to the fight against racism, xenophobia, antisemitism and intolerance, and we hope that the debates and exchanges at today's round table will help the German authorities to develop their policies in this field further.

As already stressed by ECRI's Chair, Nils Muiznieks, ECRI's aim is not to criticise governments, but to assist them in dealing with the problems they face by proposing practical, targeted and reasoned solutions as to how these problems might best be solved. This is why we are here today. Many of the issues we will be talking about have parallels in other member states of the Council of Europe and we think that their experiences also have relevance to the situation in Germany.

Before I outline the main findings of ECRI in its fourth report on Germany, I would like to give some brief additional background information on how this report was prepared.

This report is based first of all on wide-ranging research. The report draws on written sources such as legislative texts, government reports and policy statements, as well as reports of non-governmental bodies. This research was followed up, as is the case for all of ECRI's country-by-country work, by a visit to Germany itself, which took place in September 2008. During this visit, another member of ECRI, Mazhar Bari, and I had the

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opportunity to speak directly with many governmental and non-governmental experts working in the field of combating racism and intolerance.

The draft report on Germany was then discussed at length at ECRI's plenary session in December 2008, where it was adopted and endorsed by ECRI as a whole. It is thus the product of an international body of independent members with expertise in the various aspects of the fight against racism and discrimination both in their own countries and more widely.

Against this background, I would like to move on now to the content of the report on Germany. This report has been placed at your disposal during this Round Table, and I hope that you have all had a chance to re-familiarise yourselves with its contents. I will only briefly highlight here some of ECRI's main areas of interest and conclusions.

First, let me deal with questions related to the **legal framework** in the field of combating racism and racial discrimination. This is one of ECRI's priority concerns in all countries. ECRI recognises that it is not *enough* to have a strong legal framework in place. But at the same time it is convinced that a strong legal framework against acts of racism and racial discrimination is an indispensable part of the arsenal of every state in combating these phenomena.

Germany is a party to a number of **international legal instruments** that can make an important contribution to the fight against racism, and this is of course welcome. However, in its fourth report, ECRI noted that Germany has not ratified **Protocol No. 12 to the European Convention on Human Rights**. This Protocol extends the scope of protection against discrimination that is provided by this Convention. ECRI considers ratification of Protocol 12 by all member states of the Council of Europe to be of the utmost importance, as it gives victims of discrimination a right to redress before national courts and the European Court of Human Rights independently of the violation of another human right or fundamental freedom protected by the Convention. Therefore, ECRI urged Germany to ratify Protocol No. 12.

Let us now turn to domestic legislation.

In the field of **criminal law**, ECRI has already had occasion to note several provisions of the German Criminal Code. These include sections 85, 86 and 86a, which deal with the activities, symbols and propaganda of unconstitutional organisations, and section 130, covering incitement to hatred and the denial of the Holocaust. These provisions are of course all welcome contributions to the fight against racism.

Less encouraging is the fact that, although section 46 of the Criminal Code allows for the motivations of an offender to be taken into account in sentencing, it does not expressly provide that **racist motivations** constitute an aggravating circumstance for ordinary offences. (By this we refer – unlike Holocaust denial and the other offences prohibited by the specific provisions I have just described – to offences such as assault and battery, for which racism is not already taken into account as an integral part of the offence.)

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ECRI expressed particular concern in its fourth report that, as a result, racist motivations may not be systematically taken into account when sentencing persons convicted of ordinary offences, whose acts were motivated by racist prejudices but who do not, for example, visibly belong to extreme right-wing groupings. ECRI strongly recommended that the German authorities make specific provision in the criminal law for racist motivations for ordinary offences to constitute an aggravating circumstance. ECRI is aware that there was some debate occurring around this issue in 2008, and it hopes that a way forward can be found so that the criminal law very clearly provides for heavier penalties to be imposed where individuals commit crimes motivated by racism.

As regards **civil and administrative law**, in its fourth report, ECRI welcomed the enactment of the General Equal Treatment Act as a significant step forward in ensuring that victims of discrimination have justiciable rights<sup>1</sup> in Germany. However, ECRI noted that neither language nor nationality were listed as prohibited grounds of discrimination. ECRI recommends as a matter of general policy<sup>2</sup> that the law explicitly prohibit discrimination on the grounds not only of “race”, colour, religion, or national or ethnic origin but also of language or nationality. ECRI considered that, even though these latter grounds may in many cases be indirectly covered within the existing grounds, including these elements as part of the AGG would be useful, for example to counter the practice of advertising housing reserved to mother-tongue German speakers. It recommended that the authorities incorporate in the relevant anti-discrimination legislation all of the grounds referred to in ECRI’s General Policy Recommendation No. 7, in order to ensure that the highest level of protection is afforded to victims of racial discrimination. It seems that language in particular has been at issue in several cases of alleged discrimination in the field of employment that have gone through the courts since then, with varying degrees of success.<sup>3</sup> Of course not all claims of discrimination are always justified, but this is a point that remains of concern to ECRI, and we hope that the authorities will amend the legislation as recommended. I should perhaps stress that prohibiting discrimination does not mean that *all* differential treatment is against the law: it is only when there is no objective and reasonable justification for any given differential treatment that it will fall foul of the law.

I would like to mention two other points that were highlighted by ECRI in this context in its fourth report, and these are closely linked. One was the rather strict time-limits within which claims must be lodged under the AGG: ECRI considered that given the difficulties involved for victims in lodging discrimination cases, the two-month period for initiating a complaint may be too short. We are aware of one case in which the Federal Labour Court has since found that harassment had indeed occurred in the workplace, but that the complaint was time-barred.<sup>4</sup>

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<sup>1</sup> A justiciable right is one that gives a person access to a court (as opposed to a purely declaratory right, such as (for example) constitutional rights, which are often set out in the Constitution but without any mechanism for their enforcement having been laid down by law).

<sup>2</sup> See GPR No. 7

<sup>3</sup> See update on the situation in Germany, pages 11-13.

<sup>4</sup> Federal Labour Court, 24/09/2009, 8 AZR 705/08; see p13 of Update.

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The other very important and obviously related issue in this context is the need to ensure that the new anti-discrimination legislation is widely known – both in order to deter or prevent discriminatory treatment from occurring in the first place, and in order to ensure that victims are aware of their rights and know how to exercise them. With this in mind, ECRI welcomed the information that the Anti-Discrimination Agency had published information on the internet in several languages in addition to German. ECRI nonetheless recommended that the German authorities take a more proactive role in raising awareness of the legal framework now in force against racial discrimination; to this end, it recommended that the authorities run an awareness-raising campaign specifically targeted at ensuring that potential victims of racial discrimination are aware of the existence and scope of the AGG and of the mechanisms for invoking their rights before the courts.

I know that the operation of the AGG, as well as discrimination in the field of employment, will be examined in more depth in our next session, and I look forward to hearing more than about how these matters are working in practice today, almost a year after ECRI's report was published.

Two other very important issues that were explored in ECRI's fourth report were **racism in public discourse** and **racist violence**, and, of course, the measures being taken to try to counteract these. Across Europe, a hardening in the tone of political debates has occurred in recent years, in parallel with a rise in the influence and electoral success of extreme right-wing parties. The success in local and regional elections in Germany of certain parties that express racist, antisemitic or revisionist views is worrying, and ECRI noted in its fourth report that support for such parties had increased in recent years. At the same time, incidents of hate speech continue to occur, including racist propaganda on the internet, and neither the prevalence of racist expression on the internet nor the number of Neo-Nazis and other right-wing extremists appear to have decreased.

ECRI welcomed in its fourth report the considerable efforts of the German authorities to combat racism, racist violence, xenophobia and antisemitism and promote a tolerant society. It welcomed the fact that action is being taken at several different levels, including supporting victims, fighting crime when it occurs, assisting perpetrators to break out of extremist groups and seeking to prevent young people from going down the path of extremist activity. It also emphasised the long-term aspects of this fight, stressing that these kinds of programmes were likely to be needed for a considerable time to come, and recommending that long-term funding be provided to grass-roots organisations working in this field. ECRI encouraged the authorities in their efforts to ban organisations that resort to racist, xenophobic and antisemitic actions and propaganda.<sup>5</sup> It also encouraged them to intensify their efforts to counter racist, xenophobic and antisemitic activities on the internet, and to implement measures aimed at ensuring the media are better equipped to deal with the diversity of present-day German society.

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<sup>5</sup> See pp10-11 of the Update for latest news on the NPD.

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With regard to racist, xenophobic and antisemitic violence in particular, ECRI encouraged the authorities in their efforts to take a comprehensive approach, not focusing exclusively on the activities of right-wing extremists but also addressing underlying causes that may be found in society as a whole. ECRI also recommended that the authorities seek means to improve the application of existing criminal legislation to combat right-wing extremism and, more generally, to combat racist, xenophobic and antisemitic violence, including through training all the relevant actors in the criminal justice system on such legislation. The aim should be to ensure that no incidents of racist, xenophobic or antisemitic violence pass unnoticed due to an unnecessarily narrow interpretation of the existing law.

Here again, I know that questions related to preventing and effectively responding to racism will be examined in more detail later this afternoon, and I look forward to rich discussions on these issues as well.

**Discrimination in daily life** in Germany is reported in particular by members of the Muslim, Turkish, Black and Sinti/Roma communities. **Black persons** continue to be especially vulnerable to racist violence; they report that there are “no-go areas” in some *Länder* to which they avoid going alone, or avoid going altogether. As regards the exercise of the **Muslim** faith, ECRI noted in its report that – although there are some noteworthy positive examples – the construction of mosques has at times been surrounded by controversy. Muslim women have reported that, since laws were passed in certain *Länder* banning the wearing of headscarves in all or some parts of the public sector, it has, in parallel, become increasingly difficult for women who choose to wear a headscarf to find employment in the private sector. Muslims also report that, since the events of 11 September 2001, they have increasingly been identified in public discourse with crimes, and more specifically with terrorism.

There are more than 3 million Muslims from Europe, Northern and sub-Saharan Africa, the Middle East and Asia living in Germany today, and until recently there was no permanent space for dialogue between the authorities at all levels and Muslims in Germany. As ECRI noted, the creation of the German Islam Conference (*DIK*) – still in its infancy at the time of ECRI’s fourth report – was thus an important symbol of change for the authorities. The authorities’ aim was to foster integration, counteract segregation of Muslims in Germany, and prevent Islamism and extremism. ECRI observed at the time that the exercise at stake was a delicate one: as much as the new dialogue between the authorities and Muslims could send a positive message to society as a whole, this message risked being obscured if there was an excessive focus on security issues. ECRI thus recommended that the authorities intensify their efforts to combat and prevent racism and discrimination vis-à-vis Muslims in Germany effectively. It also recommended that the authorities make every effort to differentiate, in their own work and in the messages sent to society as a whole, between the small number of Muslims who may, as in any group, hold radical views, and the vast majority. We are aware that it has not always been smooth sailing since then as regards the functioning of the

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Conference,<sup>6</sup> but ECRI certainly hopes that dialogue remains possible and that common ground exists for moving forward and strengthening both the sense of belonging of Muslims to German society, and the openness of German society as a whole to Muslims, who are a part of it.

ECRI also devoted considerable attention in its fourth report to the National **Integration** Plan. It welcomed the authorities' recognition that Germany is today a country of immigration, and that immigrants should be encouraged to participate fully in society and helped to master the basic tool for such participation: the German language. It noted that the National Integration Plan represented a significant investment by the authorities in assisting the process of integration, and welcomed the authorities' willingness to devote considerable resources to this process. At the same time, ECRI expressed concern that the authorities' new and still evolving understanding of Germany had not yet filtered through to German society as a whole. ECRI noted that at grassroots level, the experience of immigrants was that the onus to integrate is placed very much on them – that only migrants were being asked to make individual efforts to adapt to the environment they live in. Some of the debates surrounding integration, including discussions on “parallel societies”, may, at their worst, have contributed to creating an impression amongst migrants that understanding and respecting the German constitutional order is not enough, and that they would only be welcome in German society if they dress, look and think like the majority population.

The Chair of ECRI will outline in today's final session the key principles that guide ECRI's work in the field of **integration**, so I will just mention briefly here ECRI's recommendations to the German authorities in this field. First, ECRI encouraged the authorities in their efforts to assist migrants to learn German, and recommended that everything be done to ensure that measures taken to achieve this result do not stigmatise those whose mother tongue is not German or endanger their individual rights. It also encouraged the authorities to develop further other aspects of the National Integration Plan, aiming to support immigrants through measures in such fields as education, employment, health, sports and the media. At the same time, it recommended that the authorities pay particular attention to developing programmes to help German citizens be more receptive to the diversity of contemporary German society. Finally, it recommended that the German authorities keep under review the new, national, naturalisation test, in order to ensure that it does not have a counter-productive effect and to allow corrective measures to be taken if necessary.

I would like to touch very briefly on some other issues covered in ECRI's fourth report on Germany and that have not been selected for more in-depth exploration in later sessions today, but that are no less important for that. ECRI welcomed measures taken to eliminate inequalities in the field of **education** – such as measures to foster the linguistic abilities of children from the very earliest stages – and to fight exclusion and discrimination in the field of **employment**. At the same time, it expressed concern that children with a migration background continue to have significantly lower chances of

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<sup>6</sup> See update, p8

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success in the school system than other children, and recommended that the authorities take measures to ensure that children are not wrongly directed into lower educational streams than necessary. It also noted the existence of some discriminatory practices in the fields of employment and **housing**.

Finally, ECRI saluted the authorities' commitment to denouncing and combating all forms of **antisemitism** and to supporting Jewish culture in Germany, although it noted that even more intensive efforts may be needed to combat antisemitic crimes.

I should perhaps mention before I end that as part of ECRI's fourth cycle of monitoring, it has decided to choose three recommendations from amongst all the recommendations made in its report that are to be subject to a process of interim follow-up two years after the report is published. These should relate to important issues, should be feasible within two years, and should aim to ensure that measurable progress is made. They are intended, as are all of ECRI's recommendations, to make a constructive contribution to the fight against racism, racial discrimination and related forms of intolerance. In the case of Germany, these recommendations include:

- raising awareness of the legal framework now in force against discrimination;
- taking steps to implement targeted training programmes to ensure that all teachers have the capacity to assess objectively the skills of students entering the secondary school system;
- launching an awareness-raising campaign targeted specifically at changing employers' attitudes towards persons with an immigrant background.

I should stress that these interim follow-up recommendations are not intended to overshadow the full breadth of recommendations made in ECRI's reports – all are carefully weighed, and all are considered important to strengthening the fight against racism. Nonetheless, ECRI hopes that by implementing these recommendations, each member state will be able to make concrete and measurable progress in several fields that are important to the fight against racism and discrimination, even in a short space of time following the publication of ECRI's reports.

As you will have seen, the breadth of issues related to the fight against racism and discrimination is considerable. ECRI, with its fifteen years of Europe-wide experience in this field, very much looks forward to today's discussions, and, as always, stands ready to contribute to the efforts being made to fight these phenomena.