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European Commission Against Racism and Intolerance

First report on Romania

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For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI
Directorate General of Human Rights – DG II
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 3 88 41 29 64
Fax: +33 (0) 3 88 41 39 87
E-mail: combat.racism@coe.int

Visit our web site: www.coe.int/ecri

INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law[1], information from international and national non-governmental organisations, various publications and the media.

b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.

c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.

d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

To date, four series of ECRI's country-specific reports have been made public, in September 1997, in March 1998, in June 1998 and in January 1999 respectively[2]. A fifth series of country-

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1 The report prepared by the Swiss Institute (ref: CRI (98) 80), covering relevant legislation in member States of the Council of Europe is available on the web site www.ecri.coe.int and, in hard copy**,** from ECRI's Secretariat.

2 The first four series comprise reports on Belgium, Bulgaria**,** the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta**,** the Netherlands**,** Norway, Poland, Portugal, the Russian Federation, San Marino, Slovakia, Slovenia, Spain, Switzerland and the United Kingdom.

specific reports was transmitted to the governments of the countries concerned in January 1999, and is thus now being made public[3].

The following report contains ECRI's analysis and proposals concerning Romania.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This fifth series of reports, for which the procedure was completed by January 1999, will be followed during 1999 by the reports on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

As from 1999, ECRI has begun a follow-up procedure to its country reports, examining what action governments may have taken on the proposals they contained, up-dating their contents generally and focusing on specific issues of concern in greater depth. Some 10 countries will be addressed annually in this way, over the period 1999-2002.

3 Reports on Austria, Latvia, Romania and Ukraine.

REPORT ON ROMANIA[4]

Introduction

With the overthrow of the dictatorship in December 1989, Romania started its return to democracy. Today, many of the laws dating from the Communist era have been repealed and the recent considerable efforts in the field of legislation should be continued in order to develop the rule of law, leading to a solid integration into the Council of Europe system. The implementation of the new Constitution of 1991 and new laws at all levels also call for a change in mental attitudes: after the fall of the communist dictatureship, Romanian society was still not yet prepared to live in a pluralist democratic system governed by the rule of law. A country such as Romania, which has 16 different minority groups, has a great responsibility to ensure that its population lives according to the precepts of tolerance. This responsibility is all the more difficult to assume given that Romania has to deal with persisting large areas of poverty, which may exacerbate, as in other countries, feelings of xenophobia and intolerance.

The possibilities for certain minority groups to maintain and develop their identity, language and culture are sometimes limited - often due to lack of resources - in areas such as education, access to the media etc. The government has shown that it is willing to take appropriate measures to improve its action in this field.

Problems of intolerance and manifestations of racism persist, particularly as regards discrimination and violence against members of the Roma/Gypsy community.

Some of the key areas identified by ECRI as meriting particular attention include:

- the situation of the most disadvantaged minority groups, in particular Roma/Gypsies;

- the development of measures taken in the field of national minorities;

- the development of criminal, civil and administrative legislation to combat racism and intolerance;

- a political strategy to deal with any situation which might lead to discriminatory acts and displays of intolerance;

- awareness-raising for tolerance, both in the majority and minority populations.

[4] Note: Any development subsequent to 6 March 1998 is not covered by the following analysis and is not taken into account in the conclusions and proposals

I LEGAL ASPECTS[5]

A. International legal instruments

1. Romania has ratified the relevant international legal instruments in the field of combating racism and intolerance with the exception of the European Social Charter and the Charter for Regional or Minority Languages. ECRI considers that Romania should ratify these instruments as soon as possible and should take the necessary measures for their full implementation. Furthermore, Romania should consider the possibility of accepting Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

B. Constitutional provisions

2. The new Constitution of 21 November 1991 laid down the principles of the pre-eminence of the rule of law and safeguards for human rights and provided the necessary legal basis to organise and hold, in Autumn 1992, democratic presidential and parliamentary elections, followed by the creation of the basic institutions of a democratic society. The new Parliament, elected in 1996, has the duty to continue the development of the democratic process.

3. The new Constitution contains many provisions explicitly dealing with issues of discrimination and other manifestations of intolerance. This is particularly the case for Article 30, para 7 which prohibits, inter alia, incitement to national, racial, class or religious hatred and incitement to discrimination. Although the Romanian government is making many efforts to combat intolerance, this and other constitutional provisions (such as the general equality clauses, e.g. Article 4, para 2 and Article 16 para 1) are proving difficult to fully implement, especially as concerns the Roma/Gypsies and certain other minority groups.

4. Article 6 of the Constitution secures to persons belonging to national minorities "the right to the preservation, development and expression of one's ethnic, cultural, linguistic and religious identity". They also enjoy the right to learn and to be educated in their mother tongue (Article 32). The Council for National Minorities was set up to implement these principles (see para. 13). Each national minority has the right to representation - and is represented - in Parliament. All the organisations of national minorities participate in the Council for National Minorities.

5. Romanian is the language used in courts throughout the country; however, persons belonging to minority groups can use their mother tongue language in court through an interpreter. This service is provided free of charge in criminal proceedings.

6. A government-adopted ordinance has just entered into force - subject to its ratification by Parliament - which amends the law on local public administration. This ordinance foresees, inter alia: the right of the municipal council, in municipalities where a minority exceeds 30% of the population, to take certain measures concerning the use of the minority language in public life; the right of local councillors to speak in their mother tongue, provided that the municipal council has so decided and an authorised

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5 A full overview of the situation existing in Romania in the field of combating racism and intolerance is provided in the publication CRI (98) 80. prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).

interpreter is available. ECRI feels that the proper and objective implementation of this law should be closely monitored.

7. Freedom of worship (Article 29) is guaranteed by the new Constitution. However, some difficulties connected to the restitution of property confiscated during the totalitarian regime from some confessions remain (see paragraph 26).

C. Criminal law provisions

8. The Penal Code contains provisions punishing propaganda of a fascist nature committed in public by any means (Article 166) - inter alia "incitement to the assassination of populations considered to be of an inferior race" - national chauvinist propaganda and incitement to racial or national hatred (Article 317). Since there is no explicit prohibition of racist organisations, ECRI encourages the Romanian authorities to take additional measures, including where necessary legal measures, in conformity with relevant international legal obligations, to better combat racist organisations.

9. The Penal Code, in its Article 247, punishes infractions committed by civil servants which have the effect of limiting the employment or the exercise of the rights of an individual or which place an individual in a situation of inferiority for reasons of nationality, race, sex or religion. However, it does not contain provisions punishing acts of discrimination or incitement to discrimination committed by private persons, and recent amendments have not remedied this shortfall. It would therefore be advisable to fill this gap, taking into account Article 2 of CERD, which engages States Parties to take measures against and put an end to racial discrimination practised by persons, groups or individuals.

10. Many abuses have been committed against minority groups, particularly Roma/Gypsies, both by members of the police forces and by individuals. While acknowledging the efforts made by the Romanian authorities to respond to the problems identified in this area, ECRI feels that criminal measures should be taken, including specifying racism as an aggravating circumstance, towards those responsible for such acts, and attention should be paid to ensuring that effective criminal proceedings are systematically initiated and brought to court.

D. Civil and administrative provisions

11. The law on local public administration n° 69/26 of November 1991 does not contain specific provisions concerning discrimination. It does on the other hand contain some provisions, which, indirectly, may ensure equal treatment on the part of the territorial administrative authorities of persons belonging to national minorities, and, consequently, may avoid any possible discrimination based on membership of a national minority. ECRI notes these measures but remains aware that they should be accompanied by complementary measures to ensure their more effective implementation in practice, in particular as regards the most disadvantaged groups, especially the Roma/Gypsies. Such measures are particularly important in the fields of employment, education and housing.

E. Specialised bodies

12. The Constitution allows for the creation of the institution of "Ombudsman" (Article 55-57). The first Ombudsman was nominated by the Parliament in May 1997. This institution should play a particularly important role in protecting the rights and liberties

of citizens who can petition it directly if they consider that their rights and liberties have been violated. One of the deputies to the Ombudsman is apparently responsible for the protection of the rights and liberties of persons belonging to national minorities. ECRI refers in this context to its General Recommendation N° 2 on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level, and hopes that the institution of Ombudsman will develop along the lines set down in this Recommendation, paying particular attention to the problems of racism and intolerance.

13. The Department for the Protection of National Minorities (DPMN) was set up in January 1997. This Department is under the direct authority of the Prime Minister. It is organised in three sections: the central executive (DPMN), the local section (the representatives of the DPMN) and consultative section (the Council for National Minorities). Among the functions of the DPMN are: preparation of draft legislation in its sphere of competence; preparation of opinions on legislation and other legal acts concerning the rights and obligations of persons belonging to national minorities; monitoring of internal and international legal standards concerning the protection of national minorities; relations with international organisations protecting the rights of persons belonging to national minorities. The Council of National Minorities, which is a consultative body with the DPMN, has, inter alia, the following functions: co-ordination and support for organisations of citizens belonging to national minorities. It should also be noted that a National Office for Roma has been created within the framework of the DPMN. ECRI encourages the Romanian government to continue its efforts in this field.

14. Other institutions, such as the European Centre for the study of ethnic problems, the Centre for Human Rights and the Romanian Institute of Human Rights, organise several initiatives aimed at building confidence and understanding between the different groups in the population, and it is noted that the Romanian authorities support all these organisations.

II POLICY ASPECTS

F. Reception and status of non-citizens/refugees/asylum-seekers

15. As from 1995, Romania has experienced a significant increase in the number of refugees and asylum-seekers from other countries. The law reforming the status of refugees, in conformity with relevant international legal instruments, was promulgated in April 1996. ECRI encourages the Romanian authorities to pursue a coherent policy as regards asylum procedures and to disseminate as widely as possible information concerning legislation and policy in this field, particularly to officials responsible for the asylum procedure and asylum-seekers themselves. The general public should also be informed in a positive fashion concerning the rights of asylum-seekers and refugees to counter prejudices and avoid the development of a climate of xenophobia towards the new arrivals.

G. Education and training

16. Generally, minority groups have the opportunity to study their mother tongue at school. As regards the largest national minorities, there are several schools in which education is provided in their mother tongue. Nevertheless, problems continue in some cases, raised particularly by Tatars; this situation should be improved, in order that all minority groups may have the opportunity to develop their mother tongue effectively.

17. In June 1995, law n° 84/1995 on education was adopted by the Romanian parliament. According in particular to leaders of the Hungarian minority, this law limited to a large extent education in the mother tongue of national minorities. The main criticisms of the leaders of the Hungarian minority as regards this law concerned the necessity of ensuring the general autonomy of educational establishments in the Hungarian language, at all levels of education, including university. The government approved in July 1997 an ordinance modifying this law, which is already in force, subject to a parliamentary debate. It contains amendments dealing with education in the languages of national minorities (for example, production of school documents in the mother tongue of the pupil, organisation of education at all levels, forms and types of education in Romanian and the languages of national minorities. ECRI hopes that this initiative will be rapidly approved by the Parliament.

18. As regards the Roma/Gypsies, a preferential quota facilitating access to higher education, particularly at the Sociology Faculty of the University of Bucharest, has been set.

- *Awareness-raising*

19. Human rights education is necessary to combat attitudes which undermine the effective respect of human rights standards. Information and education should be intensified in Romanian society to improve knowledge amongst the general population concerning the provisions of international conventions and treaties aimed at combating racism and intolerance. Furthermore, ECRI wishes to support the proposal of the Parliamentary Assembly of the Council of Europe contained in its Resolution 1123 (1997) which encourages the Romanian authorities to organise an awareness-raising campaign against racism and intolerance. ECRI wishes to mark its readiness to assist with any such campaign.

- *Police training*

20. Training is especially vital for police and prison officers, to eradicate as quickly as possible all abuses, particularly those against members of the Roma/Gypsy community. ECRI wishes to insist upon the importance of police training since violent acts are publicly committed against members of various minority groups, particularly Roma/Gypsies, which could have the effect of implying official approval of racist acts and attitudes. Seminars and training courses on human rights in the administration of justice, organised by the Centre for Human Rights and the Romanian Institute of Human Rights, have already taken place, targeting trainers and teachers in military and police academies, the media and public schools. ECRI considers that such efforts should be intensified.

H. Employment

21. There is no official discrimination in employment towards minority groups as compared with the majority population. However, Roma/Gypsies constitute the group most severely affected by unemployment. Social policy measures should be taken to improve access to employment for these sections of society. For example, professional training courses might be considered for Roma/Gypsies, organised by the employment office in collaboration with the public and private sectors of the economy. Furthermore, ECRI stresses that basic education is absolutely vital to assist Roma/Gypsy children in knowing their rights and in entering the employment market. ECRI encourages the Romanian

authorities to take the necessary measures (for example, awareness-raising programmes among teachers and parents) to ensure that the right to education of Roma/Gypsy children is respected.

22. ECRI notes that the Ministry of Labour and Social Protection has put in place a package of measures aimed at improving equality of opportunity for Roma/Gypsies on the labour market. At a regional level, posts of labour inspectors have been created in the directorates of labour and social protection with responsibility for assisting persons of Roma/Gypsy origin gain access to employment.

I. Statistics

23. The official population census provides statistical data concerning ethnic minorities. Given the increase in the number of refugees and asylum-seekers, reliable data collection systems concerning these categories should be set up.

J. Media

24. Determined efforts should be taken to counter negative attitudes displayed by the media, which run the risk of exacerbating antisemitic sentiments and racist attitudes in the population, which may particularly affect the Roma/Gypsy communities and the Hungarian minority. Law n° 41/1194 on the organisation and functioning of the Romanian radio transmission service and the Romanian television service is a valuable measure. It forbids any programme inciting, inter alia, to racial hatred or discrimination. However, several areas for improvement remain in the press sector, particularly as regards its presentation of the Hungarian minority - too often described as being "dangerous for the integrality of Romanian territory" - and as regards the presentation of the Roma/Gypsy community - too often described as "criminals" - and as regards the existence of some antisemitic elements which find expression in certain media. ECRI considers that the authorities should take measures to ensure the full implementation of existing legislation in this field. Furthermore, access of minority groups to the media might be further facilitated, and positive information on these groups presented, in order to raise awareness of their culture and promote tolerance among the population.

25. As regards the media professionals themselves, they bear a great responsibility to avoid expressions which might lead to a climate of intolerance. In this context, codes of conduct and self-regulation for the media, encouraging them to present positive information on the contribution and culture of minority groups rather than reinforcing prejudices, could be valuable.

K. Return of confiscated or expropriated real estate property

26. Some difficulties remain connected to the return of real estate property of certain Churches and communities, confiscated under the totalitarian regime, which the government is trying to resolve. An initiative was recently taken in this direction with the issuance of a governmental decision, which, following an inventory, covers the return of such property. ECRI welcomes this initiative and encourages the authorities to continue with their efforts in this area.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of governments to ECRI's questionnaire. The questionnaire was sent to the Romanian government on 13 July 1994.
ECRI accepts no responsibility for the data below.
Hungarians (1 619 368); Gypsies (409 723); Germans (111 301); Ukrainians (66 483); Lipovians (29 774); Turks (29 533); Serbs (29 080); Tatars (24 649); Aromainians (21 089); Slovaks (20 672); Bulgarians (9 935); Jews (9 107); Russians (8 914); Macedo-romainians (6 999); Schwabs (6 292); Czechs (5 800); Polish (4 247); Croatians (4 180); Greeks (3 897); Carachovians (2 775); "Ceangai" (2 165); Armenians (2 023); Sassians (1 843); Szklers (831); Ruthenians (350); Other nationalities (3 480); Ethnic origin no stated (1 047).

Population of Romania: 22 760 449 (estimated at 7.1.92). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

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