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European Commission Against Racism and Intolerance

First report on Switzerland

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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 Law¹, 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.

The first series of ECRI's country-specific reports² were made public in September 1997. A second series of country-specific reports were transmitted to the governments of the countries concerned in January 1998, and are thus now being made public³.

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

¹ The report prepared by the Swiss Institute (ref: CRI (97) 38), covering relevant legislation in member States of the Council of Europe is available from ECRI's Secretariat.

² Reports on Belgium, the Czech Republic, Finland, Greece, Hungary, Iceland, Ireland, Lithuania, Luxembourg, Malta and Poland.

³ Reports on Germany, Liechtenstein, Norway, San Marino, Slovenia and Switzerland.

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 second series of reports, for which the procedure was completed by January 1998, will be followed by other series of 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.

REPORT ON SWITZERLAND⁴

Introduction

Although Switzerland is a small country, it is characterised by some complexity in the context of national and ethnic relations. At least three aspects of this specificity should be stressed. Firstly, the fact that Swiss society is a multi-lingual society, with four official languages - German, French, Italian and Romansch. It is also a country of different religious traditions: mainly Roman Catholic and Reformed Protestant. Switzerland has proved a successful example of the peaceful co-existence of different cultural, linguistic and religious groups within one country. Secondly, the fact that Switzerland is a federation of 26 cantons, which in many realms are quite independent from the State (Federal) authorities, and which also have their own, differentiated legislation. Local communities play a very important role in the structure of Swiss society. Thirdly, the fact that, in spite of all those internal differences and contrary to many stereotypes, the Swiss have been a more "closed" society than some other Western European societies.

Traditionally, Switzerland has been in a sense separated from other countries (among other reasons, by her declared "neutrality"). This is rather a paradox, because Switzerland has for decades played host to many international organisations and their employees and many tourists. Yet at the same time, Switzerland has been rather cautious in accepting immigrants, "guest workers" and asylum seekers: immigration has been heavily controlled. Furthermore, there now seems to be a growing resentment (also on the part of some police agents) of asylum-seekers and refugees, who come from around 120 States. In fact, the proportion of non-citizens is rather high (18.1%, but 65.1% of resident non-citizens are from EFTA and EU countries). It could perhaps be claimed that in Switzerland, the division between "welcome" and "unwelcome" non-citizens is more noticeable than in some other countries.

Racial prejudices and xenophobia have been increasing over the last decade in Switzerland, as in many other countries, and can be seen both in everyday private and public life, although overt manifestations of these phenomena are rather rare. However, some extremist groups (like skinheads) became more numerous and radical a few years ago. There is also a tendency to use certain groups of non-citizens as a scapegoat for general economic and social problems. Nevertheless, in spite of a lack of official statistics, it seems that a decrease in manifestations of racism and intolerance has been noted over the last 2-3 years.

⁴ Note: Any development subsequent to 13 June 1997 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

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

- the need to reinforce educational and other measures to improve awareness and acceptance of non-citizens by Swiss society;
- measures to improve the integration of non-citizens into the civic and political life of Switzerland;
- the possibility of closing the gap in the law in order to make illegal discrimination in private contracts between individuals (e.g. in renting accommodation or recruitment).

I LEGAL ASPECTS⁵

A. International Legal Instruments

1. The UN Convention on the Elimination of All Forms of Racial Discrimination was signed by the Swiss government some years ago, but was only ratified, after a national referendum concerning the law introducing Article 261bis (racial discrimination) into the Criminal Code, in 1994. However, Article 14 of CERD has not yet been accepted. It is hoped that consideration will be given to the possibility of accepting this Article.
2. Switzerland has not ratified some important international conventions relevant to combating racism and intolerance, because such conventions either conflicted with Swiss law or dealt with problems regulated by canton (not Federal) law. This includes the European Social Charter, the UNESCO Convention against Discrimination in Education, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities. It is understood that on the instigation of the government (Federal Council), it is currently being examined under what conditions Switzerland could ratify these agreements, with the exception however of the UNESCO Convention. Switzerland is encouraged to ratify all the above-mentioned instruments, perhaps by amending Swiss law to allow the Swiss state to joint with other States in regulating contemporary problems of European co-operation in the field of combating racism and intolerance.

B. Constitutional provisions

3. Article 4 (1) of the Constitution lays down that all Swiss are equal before the law. Equality before the law constitutes a human right and, in pursuance of Article 4 of the Constitution, applies not only to the Swiss, but also to non-citizens, save when Swiss citizenship plays a primordial role in the matters on which rules are to be issued. In practice, citizens and non-citizens are treated as equal before the law. ECRI notes that it could be desirable that the principle of equality before the law for citizens and non-citizens be made more explicit in legislative texts.
4. Although the Swiss Federal Constitution does not explicitly mention race or skin colour, the ban on discrimination implicitly covers these criteria. Moreover, the Constitutions of many cantons explicitly prohibit racial discrimination.

- *Citizenship law*

5. Rules governing the acquisition of Swiss citizenship are rather strict. ECRI notes with regret that a law facilitating the acquisition of citizenship for young people has been rejected by the electoral body, and that a recent move to reduce the qualifying period of residence for non-citizens requesting citizenship from 12 to 8 years has not yet been adopted by the Parliament. Furthermore, ECRI notes the Swiss procedure for citizenship, which implies that the commune has to accept the prospective citizen. While recognising the system of democratic voting on which Switzerland is founded, ECRI still feels that this procedure should be carefully observed to ensure that non-citizens of certain ethnic origins are not systematically rejected.

⁵ A full overview of the legislation existing in Switzerland in the field of combating racism and intolerance is provided in the publication CRI (95) 2 rev, prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography)

C. Criminal law provisions

6. Anti-racist criminal legislation came into force on 1 January 1995 after a referendum. Article 261bis of the Criminal Code criminalises public incitement to racial hatred or discrimination, spreading racist ideology, denying crimes against humanity and refusing to supply a service intended for the public on grounds of race, ethnic origin or religion. ECRI hopes that the effectiveness of the new provisions in the Criminal Code will be monitored and evaluated.

D. Civil and administrative law provisions

7. There do not appear to be provisions in Swiss civil or administrative law dealing with discrimination in the conclusion of contracts in the fields of housing or recruitment. Switzerland should consider introducing such provisions
8. Victims of acts of racism, xenophobia and intolerance may apply for assistance under the Federal Act of 4 October 1991 (Law on Assistance to Victims of Offences) in case of direct offences against bodily, sexual or psychic identity.

E. Specialised bodies

9. A "Federal Commission for Foreigners" has been created to examine integration policy.

Following the ratification of the CERD, a Federal Commission against racism has also recently been created, which is to focus on preventive measures and will act as a mediator between individuals. The Chairperson of this Commission acts as a kind of Ombudsman. Some cantons had already set up such commissions, and it has been demonstrated that many of these play an important role in promoting ethnic tolerance. It is hoped that the new Commission will be allocated the necessary resources and powers to develop its role fully.

II POLICY ASPECTS

F. Reception and status of non-citizens

10. There may be a need to re-think and revise the idea of "integration" of non-domestic minority groups with the Swiss majority. Rather than an approach which may tend to play down differences between different ethnic minority groups, integration based on respect for individual, cultural and ethnic differences may prove a more successful and acceptable approach.
11. Non-citizens with a residence permit have the same fundamental rights as citizens, except in matters where citizenship plays a primordial role, for example, entry into Switzerland and the enjoyment of political rights. Non-citizens have the right to vote in the local elections in Neuchâtel and the local and cantonal elections in Jura. Non-citizens can only be elected in local elections in Neuchâtel, whereas in Jura they can also be elected to municipal commissions and for certain other public functions. Some cantons which have held referenda on this issue of granting similar rights to non-citizens have rejected the possibility. ECRI welcomes the initiatives taken by the cantons of Neuchâtel and Jura, and feels that the possibility of allowing non-citizens the right to vote and to participate in political life at cantonal level should be reconsidered in other cantons, perhaps in conjunction with an awareness-raising campaign among the Swiss population concerning the benefits of according such rights to non-citizens.

12. In the municipality of Lausanne, a Consultative Chamber of immigrants, which is an extraparliamentary commission with 42 members, of which 13 are non-citizens, is elected by the non-citizens living in that municipality. This type of body might be considered by other municipalities.
13. Rules governing the application of the asylum procedure in Switzerland have been progressively tightened over recent years: a law on restricting measures in the field of the rights of non-citizens was adopted in 1994 which seems particularly strict as regards non-citizens sejourning illegally on Swiss territory. It allows for the detention for up to three months (with a possible further extension of six months) of non-citizens without an authorisation to stay in Switzerland: this also applies to asylum-seekers whose requests for asylum have been turned down and who are residing illegally in the country. Young people from the age of 15 may also fall under the scope of this law. ECRI would wish to stress that care should be taken not to confuse the issue of asylum-seekers whose requests have been turned down with criminals, and to ensure that stricter legislation and policies neither encroach upon the rights of asylum-seekers nor prejudice public opinion against the latter.
14. Furthermore, it is important that politicians resist the temptation to resort to political discourses which tend to shift the blame for economic or social problems onto immigrants, refugees and asylum-seekers.

G. Education and training

- ***School education***

15. Education and training are mainly the responsibility of the cantons. During the preparatory procedure for Switzerland's accession to the CERD, various steps were taken in the educational field to implement its provisions. The Swiss Conference of cantonal directors of public education prepared in 1991 recommendations concerning the education of children of a foreign mother-tongue. Schools at all levels are considered to have a duty to train pupils in respect for their fellow human beings, tolerance among religious, ethnic and social groups and peace among peoples. It is hoped that the new initiatives taken at cantonal level to implement the provisions of the CERD will be evaluated and that other cantons will draw inspiration from such initiatives and follow the example of measures which prove successful. In particular, inspiration might be drawn from the steps taken for example in the cantons of Neuchâtel and Jura concerning the provision of mother-tongue teaching for non-domestic minority groups.

- ***Awareness-raising***

16. One of the most important steps towards combating racism and intolerance in any country is to admit the existence of such problems and to make society more aware of that fact. In the case of Switzerland, some stereotypes, concerning both the Swiss society (e.g. stereotype of Swiss society being fully open and multi-cultural) and stereotypes (also prejudices) concerning other societies, may need to be overcome. Measures to improve public awareness of other cultures and societies may prove valuable in this respect. The Federal Commission against racism launched a publicity campaign in July 1996 to disseminate its message against racism. Such actions are welcomed and should be repeated.

- ***Police training***

17. There have been some reports concerning police brutality towards suspects in custody, particularly non-citizens. In this context it is suggested that an independent commission might be set up, empowered to conduct a full and impartial enquiry into all allegations of ill-treatment by the police, and that police brutality should be stringently and publicly punished. Furthermore, special training for the police concerning human rights and relations with minority groups should be maintained and developed further: it is noted in this respect that decentralised courses covering the whole of Switzerland are organised by the Swiss Institute of Police in Neuchâtel. Another initiative which has proved successful in several countries is the recruitment of police officers from non-autochthonous minority groups.

H. Media

18. While not disputing the principle of the independence of the mass media and a lack of censorship, it would seem necessary to make the mass media in Switzerland aware of their responsibilities concerning the problems of racism and intolerance. In addition initiatives for combating racism and intolerance by the mass media (eg by presenting some positive cases of a fruitful co-existence between different groups), as well as monitoring acts of racism and intolerance in the mass media are to be encouraged. The Charter of the "Swiss Society of Radiodiffusion and Television" contains an obligation to contribute to international understanding. Codes of conduct in the various media professions, whereby the media practices self-regulation, would seem most desirable.

I. Employment

19. Rules governing the entrance of non-citizens onto the labour market are indirectly based on the nationality of the person in question. The definition of the countries from which it is considered possible to recruit labour takes into account the capacity for integration into Swiss society of the non-citizens. Thus, EU and EFTA citizens can enter the labour market quite freely, North American, Canadian and Australian citizens, and possibly in the near future citizens of central and eastern European countries, may be recruited in a limited fashion depending on qualifications, while citizens of other countries are only accepted onto the labour market under exceptional circumstances. ECRI notes that the boundary between the second circle (USA, Canada and Australia) and the third circle is apparently becoming less clearly-defined according to official interpretation. However, it seems that the culture, traditions and living conditions of the country of origin are taken into account when determining which category countries fall into. This system has been criticised within Switzerland - in particular by the Federal Commission against Racism - as not being in conformity with the dispositions of the CERD, however, the government did not agree with this criticism and the Federal Council when acceding to CERD reserved the right under Article 2 to maintain the above-mentioned "three circles" system. ECRI feels that this "three circles" system is of a discriminatory nature and that policy in this respect should be reconsidered. It seems that this policy is not compatible with the requirements of public international law.

J. Statistics

20. There are no official statistics in Switzerland, either at cantonal or federal level, concerning incidents of racial violence or harassment, although a non-official summary of extremist acts of violence is published monthly. The private society "Organisation for Minorities in Switzerland" and the "Foundation against Racism and Antisemitism" do

produce publications on racist events. Consideration might be given to developing a public harmonised and systematic recording system at cantonal level, with collation at federal level, to monitor acts of racial violence and harassment.

K. Other areas

- ***Civil society***

21. Civil society is an important aspect of Swiss society. Given that fact, the Confederation as well as cantons and communes are encouraged to support (by education, information, but also perhaps through the tax system, etc.) all possible actions by voluntary organisations and groups to combat racism and intolerance (this also entails support for groups and organisations involved in such actions).
22. Support could also be provided for organisations of non-citizens which aim to promote cultural activities, and for activities which aim to promote contacts and collaborations between the Swiss and non-citizens living in Switzerland (eg sports activities, music festivals)

- ***Roma/Gypsy community***

23. It is noted that a community of around 35,000 Roma/Gypsies (mostly "Jenisch", of which around 5,000 are nomadic) are living in Switzerland. A report was prepared in 1983 by a Commission nominated by the Federal Department of Justice and the Police, containing an overview of the situation of this community and the problems it faced and setting out a series of recommendations. ECRI considers that further research into the situation and protection of the Roma/Gypsy community should be conducted, in order to evaluate and monitor progress made since the publication of the previous report and to define further priorities for action.

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 Swiss government on 13 July 1994 .

ECRI accepts no responsibility for the data below.

1 260 283 non-citizens residing legally in 1993 (18.1% of the total population), of which 1 161 229 are from Europe, 21 597 from Africa, 31 045 from America, 44 344 from Asia, 1 638 from Australasia, 430 stateless or unknown. Italians are the largest non-citizen group, followed by ex-Yugoslavians, Portuguese, Spanish, Germans, Turks

24 739 requests for asylum in 1993. Refugees in 1993: 27 913

The nomad or "Jenisch" population living in Switzerland is estimated at about 25,000 persons of which 4-5 thousand are not sedentary

National languages: German (63.6% of population), French (19.2%), Italian (7.6%), Romansch (0.6%)

Population of Switzerland: 6 968 600 (1993). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

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