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European Commission Against Racism and Intolerance

First report on The United Kingdom

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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.

To date, three series of ECRI's country-specific reports have been made public, in September 1997 and in March and June 1998 respectively². A fourth series of country-specific reports was

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 three series comprise reports on Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Slovenia and Switzerland.

transmitted to the governments of the countries concerned in November 1998, and is thus now being made public³.

The following report contains ECRI's analysis and proposals concerning the United Kingdom.

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 fourth series of reports, for which the procedure was completed by November 1998, will be followed by other series of reports during 1999 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 is beginning 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 Denmark, Estonia, the Russian Federation, Spain and the United Kingdom.

REPORT ON THE UNITED KINGDOM⁴

Introduction

It is a generally accepted fact that the United Kingdom has one of the most highly advanced institutional frameworks to combat racism and discrimination. On the other hand, despite the considerable efforts of the governmental as well as non-governmental sectors in this area, the statistical figures for crimes motivated by racial intolerance and for other cases of racial discrimination are not significantly lower than in other European States. Episodes of intolerance are still rather frequent, and police malpractice in these fields is also reported. Although there seems to have been a decline since the original antidiscrimination legislation of the 1960s in the grosser and more overt forms of racial discrimination, there is a worrying persistence of the more insidious forms of discrimination, particularly indirect discrimination.

As the first major industrialised nation, and a world centre of trade and commerce, the United Kingdom has a long experience of immigration, but it was only after the Second World War that substantial numbers of immigrants from the former colonies of the Commonwealth began to respond to the post-War demand for labour. According to the 1991 census, about 6% of the total UK population today consists of members of minority groups, of which about half were born in the UK. Their distribution on the territory is nevertheless remarkably uneven, some districts having an ethnic minority population of just under 50%. The social and economic position of minority groups has generally improved over recent decades; however, most groups, to varying degrees, still suffer from disadvantages compared to the majority population.

Restrictions on immigration started in the 1960s. Since then, asylum and immigration policies have been progressively tightened and the Asylum and Immigration Act 1996 is the most recent stage of this process.

The situation in Northern Ireland remains politically sensitive and restless: despite all the efforts of the parties concerned, the strong polarisation of Northern Irish society does not facilitate consensus on the constitutional position of Northern Ireland. However, ECRI recognises the general commitment that has lately been shown to overcoming problems and continuing with the peace process.

Despite the efforts made by the government to tackle racism and intolerance in some areas where these problems arise and to promote better race relations, additional solutions appear to be still necessary in order to improve the situation.

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

- the possibility of "fine-tuning" the relevant legislation in force;

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.

- the importance of including additional areas in the process of collection of data broken down by group, enabling the relevant bodies to both identify the areas where intervention is required and measure the effectiveness of the legislation and policies which have been adopted;
- the need to raise awareness among both minority groups and the general public concerning the issues of racism and discrimination and of the measures in place to combat these;
- the need to follow closely the position of asylum seekers and to make sure that immigration legislation does not result in an increased likelihood of discriminatory and hostile behaviour;
- the persistent shortfall of confidence on the part of minority groups in the police and in the criminal justice system, and the need to eradicate incidents of police malpractice towards minority groups.

I LEGAL ASPECTS⁵

A. International legal instruments

1. The United Kingdom has ratified most of the relevant international legal instruments in the field of combating racism and intolerance, with the exception of the ILO Convention concerning Discrimination in Respect of Employment and Occupation, the European Charter for Regional or Minority Languages and the European Convention on the Legal Status of Migrant Workers. It is hoped that these instruments will be ratified in the near future. In addition, it is felt that further consideration might be given both to acceptance of Article 14 of the Convention on the Elimination of all Forms of Racial Discrimination and to the interpretation of the United Kingdom of Article 4 of the same convention.

B. Constitutional Provisions

2. Neither the United Kingdom as a whole nor any of the countries of which it is composed has a codified constitution. The constitution is only partly written, while many aspects are found in jurisprudence, the writings of leading commentators and the practice of the different branches of government.
3. Concerns have been expressed relating to the domestic status of the anti-discrimination legislation which can be superseded by new rules or laws. Although it would seem to be highly desirable, the entrenchment of guarantees against racial discrimination - in the sense that they could not be repealed- is prevented by the British constitutional doctrine of the sovereignty of Parliament, according to which the Parliament of Westminster remains competent to repeal any legislation, even if the United Kingdom is bound by international law to have and enforce such legislation.
4. The incorporation of conventions into domestic legislation or a bill of rights has in the past not been accepted on the grounds that it would enable the judiciary to strike down legislation made by the Parliament, therefore changing the nature of the constitutional relationship between Parliament and the Courts. ECRI has closely followed recent developments concerning incorporation of the ECHR into the British legal system and welcomes the recent introduction of legislation to achieve this.

C. Criminal Law Provisions

5. Provisions which penalize conduct specifically because it is racist or racially-inflammatory are to be found in Part III of the Public Order Act 1986 (POA), the conduct covered being essentially incitement to racial hatred. Other provisions, although penalising activities which are often engaged in by racists, do not specifically refer to race. Suggestions concerning additional specific legislation to tackle racially-motivated violence have not been supported in the past on the grounds that, in all criminal offences, evidence of racial motivation can be taken into account as an aggravating factor by the courts when considering sentence. ECRI notes that the Lord Chief Justice has recently made a statement stressing this. In order to emphasise the point, however, further consideration could be given to the introduction of a statutory provision

⁵ A full overview of the legislation existing in the United Kingdom 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).

requiring the prosecuting authority to place before the courts any evidence tending to show that a specific offence has been committed on racial grounds.

ECRI notes with interest that the Government has taken steps towards the introduction of a law on racial crimes in a Crime and Disorder Bill and considers that this will constitute an important step in alerting courts and the public alike to the seriousness of the problem.

In 1994 a new offence of causing intentional harassment was created which, although applicable to harassment on any grounds, was intended to deal more effectively with cases of racially offending behaviour, particularly serious and persistent ones (Sec. 4A POA). Simultaneously, the publication and distribution of written material intended or likely to stir up racial hatred (Sec. 19 POA) has been made an arrestable offence. ECRI notes with interest these developments and encourages the Government to monitor the implementation of these provisions.

6. Under section 27 of the POA the Attorney General's consent is necessary for prosecution offences of incitement to racial hatred. ECRI feels that the more usual procedure in sensitive cases whereby the consent of the Director of Public Prosecutions must be obtained would be more appropriate for prosecutions under Part III.

ECRI welcomes the inclusion in the Code for Crown Prosecutors of a provision according to which racial motivation is one of the factors to be taken into account when assessing whether prosecution is in the public interest. ECRI also stresses the need for the Crown Prosecution Service to establish a more comprehensive system of monitoring of racial incidents.

7. A 1991 law prohibiting football match spectators from taking part in chanting of an indecent or racist nature constitutes an interesting development, although there appear to be problems as regards its enforcement as shown by the relatively small number of prosecutions as well as the persistence of racist chanting. It is felt that further consideration could be given to how to ensure enforcement of this Act.

D. Civil and Administrative Provisions

8. The Race Relations Act 1976 (RRA) is one of the most comprehensive pieces of legislation dealing specifically with racial discrimination. Discrimination on religious grounds, however, is not covered and ECRI feels that legislative measures providing both individuals and communities with protection against religious discrimination could be the subject of further analysis; ECRI is aware that the government is currently examining this issue. Although this lack of protection is potentially of concern to all communities whose defining features are perceived to be primarily or wholly connected with religious observance and belief, a particular concern is expressed for the Muslim community against which there appears to be a rather widespread hostile sentiment, also shown by negative stereotypes in the media.

The reform of blasphemy law should also be undertaken with a view to make it non-discriminatory, either by abolishing it or by extending it to the other religions.

9. Further consideration might also be given to the questions related to the adequacy of legal aid available to alleged victims of racial discrimination. In the field of employment, taking into account the more favourable position of employers in providing evidence,

ways might be considered to ensure that, in circumstances consistent with less favourable treatment on racial grounds or victimisation, the alleged discriminator is required to establish valid grounds for that treatment.

10. With the recent adoption of a Race Relations (Northern Ireland) Order, legislation outlawing racial discrimination has also been enacted in Northern Ireland. ECRI welcomes these developments. However, it is noted that in the Order, public order and safety are two additional grounds for exemption from prohibition of racial discrimination as compared to the ones already enshrined in the RRA and it is felt that further consideration might be given to the desirability of this choice.

E. Specialised bodies

11. The RRA established the Commission for Racial Equality (CRE), whose duties are: to work towards the elimination of discrimination, to promote equality of opportunity and good relations between minority groups and to keep under review the Race Relations Act and recommend amendments when necessary. The CRE has powers to give assistance to individuals wishing to pursue complaints of discrimination and to conduct formal investigations. It is also empowered, inter alia, to carry out or commission research, to issue codes of practice, to provide information and advice and to support organisations working to improve ethnic relations. ECRI welcomes proposals to introduce a new statutory power to enable the Commission to accept legally-binding undertakings. The same provisions apply in Northern Ireland by virtue of the Race Relations (Northern Ireland) Order.

II POLICY ASPECTS

F. Reception and Status of non-citizens

12. The new Asylum and Immigration Act 1996, containing both restrictive measures on the rights of asylum-seekers and new or increased sanctions for immigration offenders, has given rise to several criticisms and concerns. Although ECRI acknowledges the difficulties encountered when dealing with large numbers of asylum applications, it notes that the utilisation of "bogus refugees" arguments as a justification for tightening social security provisions and for taking steps which could be detrimental to procedural safeguards within the asylum process affects many persons living in the United Kingdom in a discriminatory manner.

In addition, since the withdrawal of social benefits for the vast majority of asylum-seekers can result in significant numbers of needy men, women and children being left in difficult circumstances, the Government is encouraged to take all possible measures to avoid these consequences and to provide alternative arrangements.

13. A particular concern is expressed in relation to Section 8 of the Act, which makes it a criminal offence for employers to take on employees whose immigration status prevents them from working in the United Kingdom. There appears to be a risk that this provision could lead to the development of a perception that employment of any person who might be an "immigrant" is per se problematic and therefore to an increased likelihood of racial discrimination at the point of recruitment. ECRI is aware that guidance has been given to employers on how to avoid discrimination and it urges the Government to take all possible measures to make sure that this is actually avoided. Also, ECRI draws the attention of the Government to the role that similar provisions can play in reinforcing

attitudes of hostility and suspicion towards members of minority groups. ECRI notes that the Government has commissioned a comprehensive study of the asylum process, including a revision of Section 8 of the Act, and encourages the authorities to subsequently undertake measures to improve the situation of asylum-seekers and immigrants in order to avoid the above-mentioned possible consequences.

G. Law enforcement officials

14. ECRI notes the efforts made especially by the Home Office and other governmental bodies to develop various extensive programmes of police training in race relations' matters and to encourage increased recruitment of police officers from minority groups. On the other hand, police malpractice and discrimination towards members of minority groups appear to continue to be a problem. ECRI notes the steps taken by the UK Government to implement the recommendations contained in the 1997 report by the Police Inspectorate on Police, Community and Race Relations, and encourages the Government to reinforce and extend measures in this direction.

ECRI notes with concern reported cases of deaths in custody and maltreatment which appear to affect members of minority groups disproportionately and, while noting efforts already made in this area, stresses that it is paramount that any such reports be rigorously examined by an independent body and perpetrators punished. ECRI welcomes the introduction of ethnic monitoring of deaths in custody and hopes that the authorities will give priority to the analysis of the results. The Government is also encouraged to maintain and strengthen the monitoring of "stop and search" by the police, since a disproportionately high number of people belonging to minority groups still seems to be subject to such controls.

There have been several reports of discrimination among officials responsible for immigration control at borders and within the country. Supplementary training would seem to be desirable for officials dealing on a regular basis with non-citizens to ensure that practice and checks at border control respect basic human rights and do not have discriminatory effects against minority groups. Increased recruitment of members of such groups particularly in this field is also desirable.

15. Further consideration might be given to the establishment of Racial Incidents Units in all police divisions with an appreciable ethnic minority population. It is also felt that the police should be in a position to direct victims of racial incidents to bodies able to provide appropriate advice on their rights in civil law, in circumstances where it would be inappropriate for the police to take further action against the alleged perpetrators of those incidents. Officers should also be familiar with the local bodies able to offer assistance and support to victims, such as Racial Equality Councils, Citizens Advice Bureaux, multi-agency panels and Law Centres.

H. Education and training

- *School education*

16. ECRI notes with satisfaction the actions taken by the Government to improve the response of the education service to ethnic diversity, through access courses to higher education, increased number of teachers from minority groups and teaching of a wide range of modern foreign languages in the curriculum. It notices, however, that the national curriculum could include more extensive teaching about Britain as a multi-

ethnic society and about the roles, rights and responsibilities of citizens in such a society, although it does include programmes relevant to ethnic minority concerns in individual subjects. In addition, it would like to draw the attention of the Government to the decreasing number of specialist teachers of English as an additional language in the last few years.

17. ECRI stresses the importance of having reliable statistics -broken down by ethnicity- on the involvement, achievements and progress of pupils, students and trainees from minority groups in order to take appropriate corrective action. It notes that an Advisory Group has been set up to raise the achievement level of ethnic minority pupils and to examine the question of statistics.

There appears to be evidence that ethnic minority pupils, particularly but not only African-Caribbean boys, are being excluded from schools in disproportionate numbers. ECRI considers that it is important to take further steps in order to establish in detail what the causes of the problem are and how these are in practice to be addressed. ECRI notes that the Department of Education is working with local authorities on this issue, and hopes that the results of such initiatives will be closely monitored.

- ***Training***

18. ECRI notes with interest the establishment of the Ethnic Minorities Advisory Committee (EMAC) in 1991 to assist the Judicial Studies Board in addressing racial and multi-cultural issues in courts and hopes that these measures will be strengthened and their overall effect kept under review.

- ***Awareness-raising***

19. It is felt that in order to ensure the full and consistent implementation of legislation and policies in the fields of racism and intolerance, further steps should be taken to raise awareness among those whom such measures are intended to help and the public at large; incentives for both the beneficiaries of the policy to take up the opportunities it provides and for those responsible for its implementation could also be the subject of further consideration.
20. While noting the efforts of various governmental and non-governmental bodies in this field, ECRI suggests that additional measures be taken to raise public awareness of the issues of racism and intolerance and to improve tolerance towards all groups in society. Media may obviously play a primary role to this end. In this respect, ECRI notes that there is sometimes a tendency to portray members of minority groups (particularly new immigrants and asylum-seekers) in a rather negative fashion and considers that opinion-leaders might stress instead the valuable contribution that persons from these groups can bring to the country.

I. Employment

21. The majority of discrimination cases brought by individuals concern employment. Minority groups still face disproportionately high levels of unemployment. A number of initiatives have been launched to counter this situation, including the publication and dissemination of a Ten Point Plan for Employers. While ECRI notes with satisfaction these developments, it wonders whether a statutory duty on all employers to monitor the ethnic origins of the workforce would not be more effective than relying entirely on

voluntary action in this field. The use of economic power of both central and local government in support of equal opportunities policies is also encouraged.

22. Concerns have been voiced regarding the low rate of success in employment cases dealing with discrimination, which form only a small part of the cases dealt with by industrial tribunals: with a view to ensuring that such cases are heard by those with a thorough knowledge of the legislation and of the ways in which discrimination occurs, the Government might consider the possibility of establishing a discrimination division - possibly dealing both with sex and race discrimination cases- within the industrial tribunal system or, alternatively, ensuring proper training and expertise of tribunal members.
23. Further attention might also be devoted to indirect forms of discrimination. There seems to be evidence that this type of discrimination plays a major part in excluding members of minority groups from opportunities in various fields, including employment. Since there has been ample time for employers to adjust to the concept of indirect discrimination and to examine their own employment practices, ECRI feels that the exception contained in section 57(3), which rules out the possibility of compensation if the respondent proves that he did not intend to discriminate, should be subject to narrower criteria.

J. Statistics

24. As larger proportions of the groups most at risk of racial and intolerant behaviours are born in Britain, immigration and nationality data are becoming misleading and additional information is increasingly being collected on ethnic origin as such. In fact, the 1991 census of population included a question on respondents' ethnic origin for the first time; ECRI considers that this is valuable and important and hopes that the Government will look at ways of improving and refining this question in the next census whilst retaining continuity and bearing in mind European laws, regulations and standards on data protection and the protection of privacy.
25. Although the UK data are comparatively comprehensive, more information appears to be necessary regarding those programmes and initiatives aiming -directly or indirectly- at improving the economic and social conditions of minority groups through various measures in the field of employment and training, housing, social services, health and education. It would seem particularly desirable to have data in relation to the observance of the Equal Opportunities Ten-Point Plan for Employers and the various educational grants for minority groups students. It would be advisable to collect ethnically-based data to ensure that the programmes referred to above, and particularly the Single Regeneration Budget (SRB), effectively address the aspirations of the communities - often made up of minority groups - living in the areas and neighbourhoods to which the Government targets resources.
26. As for statistics relating to racial attacks and harassment, ECRI considers that further consideration might be given to the possibility of funding local monitoring projects to be carried out by the local authority, police and other local agencies which may be more appropriate both for picking up the experience of the smaller ethnic minority groups and for allowing local policies to be drawn up for local areas and for specific problems.

K. Housing

27. There seems to be evidence that public sector housing decisions are an area where unintentional racial discrimination is prone to occur. In the field of racial violence and harassment, ECRI considers that it is paramount that local authorities and social landlords take steps to raise tenants' awareness both of the issues involved and of the systems in place to support victims. ECRI welcomes the adoption of the Housing Act 1996 and notes that a provision whereby racial harassment constitutes a specific ground for eviction can provide valuable help in the fight against this phenomenon.

L. Media

28. Minority communities enjoy in general equal participation in radio and television broadcasts. Some concern is instead expressed over the Europe-wide spread of racist, xenophobic and especially anti-semitic material by computer-based means of communication, which allow racist groups to reach new audiences and communicate with groups in other countries. ECRI wishes to stress that solutions to these problems must be sought by all Council of Europe member States and not only on a national but particularly on an international level.

M. Other areas

- *Northern Ireland*

29. For a variety of historical and social reasons, economic benefits in Northern Ireland are unevenly distributed between the different religious communities. Considerable efforts have been made with a view to tackling discriminatory practices and easing the tension. Some advances have been made; however, further efforts appear to be necessary given the continuing imbalances in employment levels between different religious groups. The government is encouraged to make efforts to monitor the implementation of the existing anti-discrimination legislation in the field of employment and to give consideration to the possibility of further extending the legal protection against religious discrimination in the fields of housing, education and provision of goods and services.
30. There appears to be a wide cultural gap in Northern Ireland between mainstream society and some minority groups - particularly the Chinese and Traveller communities - which has resulted in a disturbing failure by many members of these groups to make use of health and other social services. ECRI is aware of a number of initiatives, aimed both at providing personal and social education and at raising English language skills. It is felt that such initiatives might be strengthened and broadened and that further similar programmes could be funded.

- *Multi-agency approach to racial incidents*

31. ECRI expresses its interest in the multi-agency approach -involving close co-operational local level between the police, local authority housing, education and social services departments, the Crown Prosecution Service, local Racial Equality Councils and voluntary organizations- as a way to develop an effective response to racial incidents. It encourages the establishment of local multi-agency panels sharing information among members, monitoring the incidence of racial attacks and harassment and developing co-ordinate policies. The recent establishment of the Racial Incidents Standing Committee is also welcomed and it is hoped that it will address itself to resolving those difficulties which have so far led to some local multi-agency panels foundering.

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 UK government on 13 July 1994.

ECRI accepts no responsibility for the data below.

5.5% of total resident population are from ethnic minority groups.

According to 1991 population census, the breakdown of the population by ethnic group is as follows: 51 874 000 White, 500 000 Black Caribbean, 212 000 Black African, 178 000 Black Other, 840 000 Indian, 477 000 Pakistani, 163 000 Bangladeshi, 157 000 Chinese, 198 000 Other Asian, 290 000 Other.

Population: 54 900 000 (1991). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

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