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ECRI REPORT ON SWITZERLAND

(fourth monitoring cycle)

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FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 2 April 2009 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

SUMMARY

Since the publication of ECRI's third report on Switzerland, on 27 January 2004, progress has been made in a number of fields covered by that report.

The new Law on Foreigners, which came into force in 2008, provides that the Confederation, the cantons and the municipalities shall take account of the objectives of integrating foreigners and "create conditions conducive to equality of opportunity and to foreigners' participation in public life." In particular, they must encourage language learning, employment promotion and preventive health care measures and support the efforts to foster mutual understanding between the Swiss and foreign populations and facilitate co-existence.

In addition the authorities have taken a series of integration measures aimed at fostering non-citizens' equality of opportunity in a number of fields. In the field of employment, case management programmes make it possible to facilitate young persons' access to employment and to take account of young immigrants' backgrounds.

In the field of housing, pilot projects, known as "urban projects", have been launched. They aim in particular to promote integration in certain neighbourhoods with a large immigrant population. In the field of health care the authorities have initiated phase II (2008-2013) of their federal "Migration and Health" strategy, launched in 2004. This strategy is intended to improve the health-care context in which migrants live and to establish equal opportunities with regard to the health care system.

A growing number of cantons or municipalities provide that longstanding residents can participate in local elections. All of the cantons have offices or contact persons responsible for fostering non-citizens' integration.

Despite limited human and financial resources, the Federal Commission against Racism and the Federal Service for Combating Racism have contributed to raising awareness of the issue of racism and racial discrimination in Switzerland. The Federal Commission for Migration Issues, established in 2008 through the merger of the Federal Commission for Foreigners and the Federal Commission for Refugees, has also helped to draw attention to the problems of racism and racial discrimination encountered by non-citizens in Switzerland.

Concerning the question of naturalisation, a federal law entering into force on 1 January 2009 provides that all negative decisions on naturalisation, including those taken by direct democracy or by a municipal assembly, must state reasons and be open to a judicial appeal and that naturalisation applicants' private lives must be respected.

The measures to counter the disadvantages encountered by pupils of immigrant origin in access to education have been reinforced. Many schools implement educational projects concerning human rights and intended to combat intolerance. Teachers increasingly receive training in human rights and intercultural skills, as do other public officials in contact with immigrants.

The Federal Council has developed a general strategy to combat right-wing extremism. The authorities have undertaken a national research programme relating to the far right, which has made it possible to enhance knowledge of this problem's causes and to identify counter-measures.

The federal authorities regularly adopt positions against racism and intolerance, notably by openly opposing certain intolerant parliamentary motions and requests for referenda ("popular initiatives"), such as the request for a referendum aimed at banning the construction of minarets.

The Swiss authorities have taken a number of measures to prevent police misconduct, especially of a racist nature. They include training and, in some cases, greater cultural diversity in the recruitment of staff.

ECRI welcomes these positive developments in Switzerland. However, despite the progress achieved, some issues continue to give rise to concern.

With regard to legal provisions against racism and racial discrimination, the criminal law provision against racism - Article 261bis of the Criminal Code - has been publicly called into question on a number of occasions in recent years, not least by proposals for its repeal. Although the provision's application by the prosecuting authorities and the courts is generally satisfactory, there are still some uncertainties and flaws in its interpretation, which restrict its effectiveness. Furthermore, as it stands at present, Swiss criminal law is not sufficiently complete to allow effective action against all racist acts.

Many sources and a wide range of studies highlight problems of direct racial discrimination in access to employment, housing, goods and services, in particular car insurance, and in other fields, such as naturalisation through direct democracy. The victims would appear to be mainly from the Balkans, Turkey or Africa and/or Muslims. The provisions applying in Swiss law are apparently insufficient to deal with these forms of discrimination, or have too many drawbacks, and there is a lack of a full range of civil and administrative law provisions against discrimination. In this field, as in other fields, the scope of cantonal powers allowed under Swiss law adds particular importance to the development of machinery to co-ordinate and share best practice in combating racism and racial discrimination throughout Switzerland.

There has been a dangerous polarisation in political discourse. Specifically, the political discourse of the UDC party, which obtained the highest score (29%) in the 2007 parliamentary elections at federal level, has in recent years taken a racist and xenophobic tone, leading to racist generalisations concerning non-citizens, Muslims and other minority groups in the words and images it uses and in the tangible proposals submitted or supported by this party in parliament or addressed directly to the people. Repeated attacks by UDC members against foreigners' fundamental rights and against the prohibition of racism and xenophobia have created a deep sense of unease in Swiss society generally and especially in minority communities. To date, attempts to combat this way of playing on the fears of certain members of the majority population have proved insufficient to counter the phenomenon. Furthermore, racist and xenophobic ideas disseminated by some politicians have a devastating effect on the atmosphere concerning the target groups in Switzerland.

ECRI notes that immigrant children and children of immigrant origin continue to be disadvantaged in their access to education despite the measures taken by the authorities to enable them to overcome linguistic obstacles. On leaving school they sometimes encounter difficulties in finding apprenticeships due to discrimination resulting from stereotyping and prejudice concerning them, a phenomenon which also affects young people from communities such as the Travellers, the Sinti, the Yenish and the Roma.

The Swiss media sometimes put across racist and xenophobic stereotypes, and media references to the ethnic origin of a person suspected or convicted of a criminal offence, even when the information is irrelevant, are still a frequent problem.

Although their number remains marginal, there are active neo-Nazi and far-right groups in Switzerland, who demonstrate their hostility towards non-citizens, sometimes in violent ways, and defend islamophobic and antisemitic ideas.

Travellers and members of the Yenish community with an itinerant lifestyle still encounter difficulties with regard to the number of permanent or transit sites available. They continue to suffer from prejudice and stereotyping which sometimes lead to discrimination. In Switzerland, Roma in general are subject to the same prejudices, stereotypes and discrimination.

Black people living in Switzerland face hostile reactions by some members of the majority population, caused by certain politicians' discourse with regard to them. A number of sources indicate that Black people have been the target of racist abuse and racial profiling by members of the police. This problem apparently also affects other persons who are visibly of foreign origin.

Non-citizens and asylum seekers have to contend with more stringent legislation concerning their legal status, which entered into force in 2008, and with the stigmatising political discourse of certain politicians.

In this report ECRI requests the Swiss authorities to take further action in a number of areas; it issues a series of recommendations, including the following.

ECRI recommends the ratification of a number of international legal instruments including Protocol No. 12 to the European Convention on Human Rights, which provides for a general prohibition of discrimination. It asks that the criminal law to combat racism be supplemented, in particular by introducing a provision making it possible to aggravate the penalties for all offences, such as assault or destruction of property, committed with a racist motivation.

ECRI recommends that the Swiss authorities pursue their efforts to train police officers, prosecutors, judges and future legal professionals in the scope and application of Article 261bis of the Criminal Code, which is intended to prohibit racist acts. In particular, provision should be made for training courses allowing the different members of the judicial system to exchange information and expertise in order to speedily bring about an improvement in the application of Article 261bis by all those concerned.*

ECRI strongly recommends that the Swiss authorities reinforce without delay the civil and administrative legal framework for combating racial discrimination, in order to cover all types of discrimination in all fields of life, taking due account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

ECRI recommends consolidating and further developing the resources of bodies such as the Federal Commission against Racism, the Federal Service for Combating Racism and the Federal Commission for Migration Issues.

ECRI recommends that the Swiss authorities assess the integration measures taken in order to determine which additional measures should be adopted to promote integration and counter racism and racial discrimination. During this assessment special attention should be paid to the integration agreements to verify that the applicable sanctions do not have a counter-productive effect on the integration of the persons concerned or on the climate of public opinion and debate concerning the target groups. Should the assessment result in a finding that the integration agreements are

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

ineffective and counter-productive, all the necessary adjustments should immediately be made to rectify the situation.*

ECRI recommends that the Swiss authorities reinforce their efforts to combat racism in political discourse and in the media and also to counter all forms of racist violence.

ECRI recommends that the Swiss authorities ensure that all members of the police, whether already in active service or in initial training, follow training and awareness-raising courses regarding the need to combat racism and racial discrimination in policing, including racial profiling. It recommends that structures be set up to enable the exchange of good practice in this field between the various police forces at the federal, cantonal and municipal levels. With regard to these issues and all other issues of relevance to the police, ECRI draws attention to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which gives guidelines concerning the measures to be taken in this field.*

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and implementation of legal provisions

International legal instruments

1. In its third report ECRI recommended that Switzerland sign and ratify Protocol No. 12 to the European Convention on Human Rights, which provides for a general prohibition of discrimination.
2. In a report on Switzerland and the Council of Europe conventions, the Swiss Federal Council acknowledges the importance of Protocol No. 12 but notes that its impact and the consequences of its implementation for Switzerland's legal system remain hard to assess (scope, margin of appreciation left to states, possible horizontal effects, possible positive obligations to legislate). That is why the Federal Council has abandoned the idea of acceding to it for the time being. However, the Council says that with a view to eventually signing and ratifying Protocol No. 12, it will continue to look into the possibility of implementing it in Switzerland, and if appropriate, will arrange to consult the cantons.¹
3. ECRI recommends that Switzerland sign and ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible. It strongly encourages the Swiss authorities to look into the possibility of implementing this protocol and consult the cantons, as envisaged by the Federal Council. It also encourages the authorities to include the question of ratifying the protocol in the debate that ECRI recommends conducting on the subject of enacting comprehensive legislation against racial discrimination.²
4. In its third report ECRI recommended that Switzerland ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. Switzerland signed this protocol on 9 October 2003. The Swiss authorities have prepared draft legislation with the intention of implementing the Council of Europe's Convention on Cybercrime. Switzerland does not, however, plan to ratify the Additional Protocol in the near future.
5. In its third report ECRI recommended that Switzerland sign and ratify the Revised Social Charter, the UNESCO Convention against Discrimination in Education and the Convention on the Participation of Foreigners in Public Life at Local Level. The Swiss authorities have said that they do not plan to ratify these instruments in the near future.
6. Switzerland has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
7. ECRI again recommends that Switzerland ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems.
8. ECRI again recommends that Switzerland sign and ratify the Revised Social Charter, the UNESCO Convention against Discrimination in Education and the Convention on the Participation of Foreigners in Public Life at Local Level.

¹ See the Federal Council's Ninth Report on Switzerland and the Council of Europe Conventions, 21 May 2008, 08.045, 2008-4093.

² See below: "Legislation prohibiting racial discrimination".

9. ECRI recommends that Switzerland sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Article 261bis of the Criminal Code: the criminal provision against racism

10. In its third report ECRI recommended that the Swiss authorities continue to monitor the application of Article 261bis prohibiting certain racist acts. It encouraged the swift entry into force of the new proposals for amending the Criminal Code in order to complete protection against racism, such as a ban on the wearing of distinctive signs of a discriminatory attitude based on race and the public use of slogans, gestures or forms of salutation with a racist meaning, and the criminalisation of the creation of or participation in groups which intend to commit acts prohibited under Article 261bis.
11. Article 261bis of the Criminal Code³ prohibits public incitement to hatred or discrimination, the propagation of a racist ideology, the organisation or encouragement of acts of propaganda against a person or group of persons on account of their race, ethnic origin or religion, and the fact of publicly disparaging or discriminating against these persons or denying them, for the same reason, a service intended for the public.⁴ It also prohibits denial of a genocide or crime against humanity. All these acts are punishable by a term of no more than three years' imprisonment or a monetary penalty.
12. Article 261bis, which was introduced in 1995, has not been amended during the years since the publication of ECRI's third report, nor have any criminal provisions on racism and intolerance been added to it. Yet many proposals to revise the text have been made in recent years and there have been lively debates between those proposing to repeal Article 261bis and those who consider the text inadequate to effectively combat racism in Switzerland.
13. On the one hand, a number of elected representatives and others have challenged the content and even the existence of Article 261bis, particularly in the name of freedom of expression, which they believe this provision endangers. In 2005 the UDC political party tabled a motion in Parliament requesting the repeal of Article 261bis of the Criminal Code. In 2007 the then Minister for Justice and Police, who belonged to the same party, organised a consultation on "the advisability of revising the anti-racism criminal provision". A request for a referendum "in favour of freedom of expression – we shall not be muzzled" was launched in June 2007 to repeal the "criminal provision against racism". It failed, with only 80,000 signatures by 7 February 2009, the deadline for obtaining the 100,000 signatures required to be able to hold a referendum.
14. On the other hand, the Federal Commission against Racism, anti-racism experts and anti-racist NGOs have all opposed the idea of repealing or weakening the existing provision because this would be a definite step backwards in Switzerland's efforts to combat racism. They are not simply in favour of maintaining the provision, but consider that it must be reinforced and supplemented. For example, the anti-racism experts support the long-standing proposals to extend the prohibition of racist acts to the fact of wearing racist symbols and setting up racist groups, but these proposals have not succeeded so far. The Swiss authorities have indicated that a proposal for a specific provision in the Criminal Code to ban the wearing of signs of a discriminatory attitude based

³ The Military Criminal Code includes an Article 171c whose content is equivalent to that of Article 261bis of the Criminal Code.

⁴ On the discriminatory refusal to supply a public service, see also below "Legislation prohibiting racial discrimination".

on race and the public use of slogans, gestures or forms of salutation with a racist meaning, is currently under examination. However, ECRI notes that the motion accepted by Parliament to add a ban on racist symbols to Article 261bis was made before its previous report was even published, and that the Federal Commission against Racism regrets that discussion of this motion is postponed each time. The proposal to prohibit the setting up of racist organisations has been rejected and is therefore no longer on Parliament's agenda.

15. ECRI notes that its General Policy Recommendation No. 7 asks governments to introduce a whole series of criminal provisions prohibiting racism. It therefore considers that Article 261bis should not only be kept, but also supplemented with several provisions including those mentioned above concerning racist symbols and organisations. As regards racist expressions and freedom of expression, ECRI points out that the European Court of Human Rights has held in several judgments that, subject to certain conditions, the state authorities can restrict the exercise of the freedom of expression by imposing criminal penalties on the perpetrators of racist acts. The same line of reasoning applies to freedom of association.⁵
16. In view of reports that there are instances of racist violence in Switzerland, particularly committed by persons belonging to neo-Nazi groups and other far-right movements,⁶ ECRI wishes to emphasise the need for appropriate criminal provisions enabling penalties to be duly imposed for ordinary offences committed with racist motives. Accordingly, criminal law must expressly provide that racist motivation is an aggravating circumstance in the determination of penalties for any ordinary offence, especially assault, murder, arson and destruction of property.
17. ECRI urges the Swiss authorities to complete the criminal legislation on racist offences. It draws their attention to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which sets out guidelines on the subject.
18. In particular, ECRI recommends classifying as criminal offences the following acts, if they are intentional: the fact of wearing racist signs and symbols in public and the fact of setting up or joining groups that promote racism. It recommends providing that for any offence other than those already covered by Article 261bis of the Criminal Code, racist motivation constitutes an aggravating circumstance.
19. Several studies, some of them detailed, cover the courts' case-law on the application of Article 261bis of the Criminal Code (and its equivalent in the Military Criminal Code, Article 171c). While these provisions are far from being dead letter and are satisfactorily applied on the whole, Article 261bis is sometimes interpreted in a manner that does not allow effective action against racist acts.
20. A review of case-law in recent years shows that prosecutions are regularly brought for the offences provided for in Article 261bis and that many courts apply Article 261bis appropriately and punish the authors of racist remarks, usually with monetary penalties but also, in the most serious cases, with prison sentences.

⁵ See also ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, paragraph 3: "The constitution should provide that the exercise of freedom of expression, assembly and association may be restricted with a view to combating racism. Any such restrictions should be in conformity with the European Convention on Human Rights". See also the explanatory memorandum on paragraph 3, and paragraph 18 of General Policy Recommendation No. 7, which lists the acts that national legislation should classify as criminal offences.

⁶ See below: "Racism in public discourse: – Neo-Nazi groups and other extreme right-wing movements" and "Racist violence".

Judgments rendered on appeal by the Federal Tribunal help to clarify given aspects of this article and to unify cantonal case law. For example, ECRI notes with interest that it took a clear stance on what is to be understood by the term “public”, since some of the acts listed in this article, such as incitement to racial hatred, are prohibited only if committed in public. In a judgment of 27 May 2004 (ATF 130 IV 111) the Federal Tribunal held that acts concerning the family circle, a circle of friends or particular personal relationships or relationships of trust are not considered public. In the case in question, it held that allegations made in a speech during a closed meeting, in a forest refuge, in front of 40 to 50 skinheads belonging to different small groups, were public.

21. However, some uncertainties and flaws remain in the interpretation of Article 261bis by the prosecuting authorities and the courts. This has made the use of the criminal law in combating racism less effective. In some cases, courts interpret racist insults as infringing the dignity of the persons targeted and punish them, whereas others acquit the authors of very similar remarks on the grounds that there is no infringement of human dignity. In order for Article 261bis to apply, persons must be targeted “on account of their race, ethnic origin or religion”. Some prosecuting authorities and courts interpret the concept of ethnicity in such a way as to make the provision meaningless. For example, in the case where a person banned “former Yugoslavs” and “Albanians” from his restaurant, the judge held that while the Albanians constituted an ethnic group, such was not the case of “former Yugoslavs”, since Yugoslavia precisely comprised several ethnic groups. In another case, the authorities did not prosecute over a refusal to allow “nationals of the Balkans” to enter a discotheque, on the grounds that this was not contrary to Article 261bis because “nationals of the Balkans cannot be classified in a religious group or race and do not meet the definition of an ethnic group either”.
22. ECRI points out that in order for the criminal prohibition of racist acts to be effective, it must concern racist remarks or acts targeting a person or group of persons for reasons that are real but also assumed or even mistakenly perceived by the perpetrator, such as race, colour, language, religion, nationality and national or ethnic origin.⁷ ECRI notes that in some cases the courts interpret Article 261bis along these lines, since they have already rightly applied it to remarks levelled at groups such as “foreigners” or “asylum seekers” which cannot in the strict sense be regarded as sharing the same racial or ethnic origin or the same religion.
23. A further problem is that as the law and the courts’ interpretation of the law currently stand, it is virtually impossible for an anti-racist association or one representing the interests of a group targeted by racist remarks to bring a complaint and take part in the proceedings to put across its point of view.
24. In ECRI’s view, these gaps in the application of the criminal provisions against racism should be filled in order to make them fully efficient⁸. A study of the case-law shows that it is perfectly possible to interpret Article 261bis in such a way as to fill some of the gaps noted above and that it is necessary to harmonise and optimise the manner in which it is interpreted by the prosecuting authorities and the courts.
25. ECRI recommends that the Swiss authorities pursue their efforts to train police officers, prosecutors, judges and future legal professionals in the scope and application of Article 261bis of the Criminal Code, which is intended to prohibit

⁷ See ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

⁸ See above, on the need to supplement criminal law with additional provisions.

racist acts. In particular, provision should be made for training courses allowing the different members of the judicial system to exchange information and expertise in order to speedily bring about an improvement in the application of Article 261bis by all those concerned.

26. ECRI recommends in particular that the authorities give associations and other legal entities with a legitimate interest in combating racism and racial discrimination the practical possibility of playing a part in the criminal proceedings, particularly by bringing a complaint, even if there is no specific victim.
27. Several bodies collect data on racist incidents and the judicial action taken on them or otherwise. For several years, for example, the Federal Commission against Racism has been publishing the courts' case-law on Article 261bis of the Criminal Code. It also publishes statistics concerning these judgments: Altogether, between 1995 and 2006, 355 judgments were reported, with an annual maximum of 49 judgments in 2006. According to the Foundation against Racism and Antisemitism (GRA), the number of racist incidents in Switzerland increased in 2007. According to the foundation's yearbook "Chronologie Racisme", a 30% increase in the number of racist incidents was recorded in 2007 by comparison with the previous year. At the reference date used in this yearbook, 113 racist incidents were recorded in 2007 as against 87 at the same point in 2006. The data collection system should be improved further in order to achieve reliable and effective monitoring of the way in which the criminal justice system as a whole deals with racist incidents and offences. This objective would best be met if the prosecuting authorities and the courts set up appropriate monitoring systems or improved their existing systems. The aim should be to provide easily accessible information on the investigations conducted, prosecutions brought and convictions handed down in these cases. ECRI is pleased to learn that the Swiss authorities are considering improving the existing monitoring system.
28. ECRI recommends that the Swiss authorities pursue and reinforce their efforts to collect data on the application of criminal law provisions against racism.

Legislation prohibiting racial discrimination

29. In its third report ECRI recommended that the Swiss authorities prepare and enact more comprehensive civil and administrative law provisions prohibiting discrimination in fields such as housing, employment, access to public places and service provision.
30. Since the publication of ECRI's third report, no amendments have been made in order to supplement Switzerland's legislation against racial discrimination. There are a few provisions in Swiss law which might be used to sanction racial discrimination, but in ECRI's view it is important to fill the legal vacuum in this area. ECRI notes with concern that many sources and a wide range of studies highlight problems of direct racial discrimination, for example, in access to employment, housing, goods and services. The victims would appear to be mainly from the Balkans, Turkey and Africa, and/or Muslims. Immigrants' and NGO representatives and public officials from various government departments regularly report that they themselves have observed cases of this kind or have received serious allegations to that effect. These issues are dealt with in other parts of this report.⁹

⁹ See in particular below: "Discrimination in various fields".

31. The provisions applying in Swiss law are apparently insufficient to deal with these forms of discrimination, or have too many disadvantages; they therefore need to be supplemented. The main provisions applying in this area are Article 8 of the Constitution¹⁰ and Article 261bis of the Criminal Code.¹¹ Article 8.2 of the Constitution prohibits discrimination for reasons of, inter alia, origin, race, language and religious convictions. It is directly applicable in relations between individuals and the public authorities, but does not apply in relationships between individuals. There are also international legal provisions which are directly applicable in the domestic legal system and prohibit discrimination. They include Article 14 of the European Convention on Human Rights, which prohibits discrimination in the enjoyment of the rights secured by the Convention. The Convention is directly applicable by the Swiss courts, but it appears that they have never applied Article 14 in cases of racial discrimination, nor any other international legal provision of the same kind.
32. Article 261bis of the Criminal Code, entitled “Racial discrimination”, provides in paragraph 5 for a term of imprisonment or a monetary penalty in respect of those who deny a person or group of persons, because of their race, ethnic origin or religion, a service intended for the public. It also prohibits publicly disparaging or discriminating against a person or group of persons because of their race, ethnic origin or religion, whether by spoken words, in writing, in images, by gestures, by illegal actions or in any other manner, in a way that infringes human dignity. As indicated above, the courts’ application of these provisions at times leaves something to be desired.¹² In any event, criminal law applies only to intentional discrimination and does not, therefore, afford compensation for the damage sustained by a victim where this was not intentional. However, the Swiss authorities have indicated that the new Swiss Code of Criminal Procedure, due to enter into force on 1 January 2011, will introduce the possibility for the criminal judge to deal with the related civil action. Moreover, under the principle of the presumption of innocence, strict rules of evidence are applied in criminal law, so that in many cases of discrimination it is harder for the victims to use this remedy for compensation purposes.
33. In civil law there are no provisions clearly prohibiting direct or indirect racial discrimination. There are a few provisions described by specialists as possible substitutes to provide victims with compensation all the same. Some courts have in fact applied these provisions to sanction racial discrimination. For example, Article 28 of the Civil Code prohibits “illegal interference with personality” and the courts have already used this provision to sanction racial discrimination. In labour law, Article 328 paragraph 1 of the Code of Obligations requires the employer to “protect and respect the worker’s personality in labour relations”. In one case in Lausanne, an employer refused to recruit a Black woman as a carer on the pretext that her skin colour might, in its words, “frighten the patients”. The Lausanne Labour Court had to apply Article 328 paragraph 1 of the Code of Obligations to palliate the lack of a legal provision prohibiting discriminatory refusal to recruit as such. The employer was ordered to pay the victim damages amounting to CHF 5 000. This example shows that a victim of racial discrimination can only be granted compensation indirectly.

¹⁰ Article 8 of the Constitution of the Swiss Federation: “1. Everyone is equal before the law. 2. No one shall be discriminated against for reasons such as their origin, race, sex, age, language, social position, way of life, religious, philosophical or political convictions, or because of a physical, mental or psychological disability. (...)”.

¹¹ On the subject of this article, see also above: “Article 261bis of the Criminal Code: the criminal provision against racism”.

¹² See above: “Article 261bis of the Criminal Code: the criminal provision against racism”.

34. Another problem is that, as the law currently stands, in the few cases in which discrimination is prohibited, it is in any event hard to prove the existence of discrimination before the courts because discrimination is sometimes concealed under a specious justification. There is no provision against racial discrimination which provides for sharing the burden of proof, as recommended by ECRI. Sharing the burden of proof, which can be done only in civil and administrative law, not in criminal law, means that the complainant must establish a number of facts leading to a presumption of discrimination and that the burden of proof is then shifted to the defendant, who must prove that there has been no discrimination.
35. As there are no provisions clearly prohibiting racial discrimination in all fields of life, it is difficult to combat such discrimination, which violates human rights and directly infringes the dignity of the person discriminated against. ECRI notes with regret that this discrimination is often perceived in Switzerland as a regrettable act at most, but not necessarily an illegal one. ECRI was struck by the explanation repeatedly given by public officials and representatives of civil society, that in private relationships the principle of contractual freedom prevails. This allegedly makes it impossible to ban racial discrimination in access to housing or employment, for example.
36. In view of this situation, ECRI considers that civil and administrative law provisions should be enacted to supplement the constitutional and criminal law provisions in force against racial discrimination. In this area, while criminal law has a symbolic impact in that it alerts the public to the seriousness of racial discrimination and has a powerful deterrent effect, civil and administrative law often offers more flexible legal solutions which can make it easier for the victims to apply to the courts and allow them to obtain compensation more easily. ECRI is pleased to note that several recent initiatives have been taken to fill the current legal vacuum in Switzerland, including informing victims as fully as possible about any legal remedies they could nevertheless consider.¹³
37. Anti-discrimination experts, members of civil society and the Federal Commission against Racism all urge the enactment of comprehensive legislation prohibiting discrimination on grounds such as race, colour, nationality, language, religion and national or ethnic origin, and also on other grounds, in all fields of life. The Federal Service for Combating Racism has contributed to the debate on these issues, for instance by helping to organise a colloquy on “Protection against discrimination: learning from Europe?” in 2008.¹⁴ A number of parliamentarians have tabled bills to prohibit discrimination, particularly racial discrimination, but these have as yet gone no further.
38. In taking steps to enact the relevant legislation, the authorities could draw inspiration from ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. ECRI notes that a 1995 federal law on equality between women and men prohibits direct and indirect gender-based discrimination. This law provides for alleviating the burden of proof and empowers the relevant NGOs to apply to the courts. It also provides that positive action, i.e. the fact of taking steps to promote equality between women and men in practice, does not constitute discrimination. The authorities could also, therefore, draw inspiration, *mutatis mutandis*, from the law on equality

¹³ See for example the Handbook for victims of racial discrimination (Humanrights.ch, Federal Commission against Racism and Foundation against Racism and Antisemitism – GRA), which can be notably accessed on the CFR website: www.ekr.admin.ch.

¹⁴ Colloquy of 2 December 2008 “Protection against discrimination: learning from Europe?”; the report of the colloquy is available on the Service’s website: www.edi.admin.ch/frb/.

between women and men, and also from the current European Union directives governing racial discrimination at work and in other fields of life.¹⁵

39. ECRI considers that in order to be fully effective, existing and future legal measures should be supplemented by awareness campaigns on the problem of direct and indirect racial discrimination.
40. ECRI strongly recommends that the Swiss authorities reinforce without delay the civil and administrative legal framework for combating racial discrimination, in order to cover all types of discrimination in all fields of life, taking due account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. It emphasises the importance of establishing a system for sharing the burden of proof in cases of discrimination in all areas governed by civil and administrative law, including employment, training, access to housing and goods and services intended for the public.
41. ECRI also recommends that the Swiss authorities pursue and step up their efforts to inform the public, for example through awareness-raising campaigns, about the existing provisions prohibiting racial discrimination and any provisions enacted in the future. The accent should be placed on the complementary nature of civil and administrative law on the one hand and criminal law on the other, since all these branches of law have a practical part to play in combating racial discrimination.

Anti-discrimination bodies and other institutions

- *The Federal Commission against Racism (CFR)*
42. In its third report ECRI recommended that the Federal Commission against Racism be further developed in accordance with the principles laid down in ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, particularly as regards this body's guarantee of independence and its competence to investigate and deal with individual complaints of discrimination.
 43. ECRI notes with interest that the Federal Commission against Racism has continued to play an important role in fighting racism and racial discrimination in Switzerland despite its limited budget and areas of competence. A number of the CFR's activities and of the positions it has adopted are mentioned elsewhere in this report. As recommended by ECRI, the CFR is competent for monitoring legislation and giving opinions and advice to the legislative and executive authorities, raising public awareness of racism and racial discrimination issues and promoting policies and practices aimed at guaranteeing equal treatment. Through its many publications and awareness-raising campaigns the Commission has helped to enhance knowledge of the phenomenon of racism in Switzerland, particularly with regard to groups such as Blacks, Muslims and immigrants or on subjects such as the Internet, sport, the media and political discourse. The Commission also receives individual complaints. It can give legal or other advice to victims and can also act as mediator. However, its assigned areas of competence and the human and financial resources allocated to it are insufficient to enable it to play to the full the role of an individual complaints body.
 44. ECRI very much regrets to learn that, despite its recommendation that the Federal Commission against Racism be further developed, the institution's budget has been cut in the context of budget cuts concerning the whole of the

¹⁵ Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

federal administration. There were even a number of proposals in Parliament that this structure should quite simply be eliminated. A member of parliament has regrettably tabled a motion calling for the already small budget of CHF 155 000 to be reduced to a single franc.

45. The analysis of the situation in Switzerland, as set out in this report, be it in matters of legislation to combat racism and racial discrimination, of racist public discourse or of other acts of discrimination, on the contrary shows that it is absolutely essential to preserve and reinforce an institution such as the Federal Commission against Racism. This commission would also benefit from a consolidation of its status under a federal law and, in the spirit of ECRI's General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, from a full guarantee of its independence vis-à-vis the authorities, which is not the case at present since it must obtain the Federal Department of Home Affairs' authorisation before publishing any document.

46. ECRI strongly recommends that the Swiss authorities consolidate and further develop the Federal Commission against Racism by increasing its human and financial resources and broadening its competence to functions such as providing assistance to victims, the power to conduct investigations or the right to initiate and intervene in judicial proceedings. Its status should also be consolidated, and its independence guaranteed.

- *The Federal Service for Combating Racism (SLR)*

47. The Federal Service for Combating Racism (SLR), which is attached to the Federal Department of Home Affairs, co-ordinates the many activities pursued at the federal, cantonal and municipal levels with the aim of preventing racism, antisemitism and xenophobia. It supplies financial support for tangible projects to combat racism and promote human rights and provides practical information on racism and links to anti-racism organisations in Switzerland.

48. ECRI is pleased to note that the Federal Service for Combating has done much to help enhance knowledge of the phenomenon of racism and racial discrimination in Switzerland. As mentioned in other parts of this report, the service organises or participates in activities which help to enhance action against racism in Switzerland. For example, it hosts seminars and publishes brochures on these issues. It is therefore essential that this service be maintained and reinforced, in view of the role it plays in raising awareness of the problem of racism in Switzerland.

49. ECRI strongly recommends that the Swiss authorities strengthen the Federal Service for Combating Racism by endowing it with human and financial resources commensurate with its role and by continuing to permit it to provide ongoing funding for projects aimed at combating racism and racial discrimination.

- *The Federal Commission for Migration Issues (CFM)*

50. The Federal Commission for Foreigners and the Federal Commission for Refugees were merged in 2008 to become the Federal Commission for Migration Issues (CFM). This Commission is extra-parliamentary in nature. It advises the Federal Council and the administration on migration issues and publishes reports, opinions and recommendations. The Federal Commission for Migration Issues assumes the tasks of the two previous commissions, except for detailed examination of projects aimed at fostering integration. This task will henceforth be performed by the Federal Office for Migration. Within focus 3 of the Federal Programme for Promoting Integration, the CFM may support model projects. They serve as incentives to developing a practice of integration, to supporting

exchange and networking between institutions and cantons, and to promoting examples of good integration practice. The CFM supports model projects mainly under specific thematic umbrellas: at present, “active citizenship” and “integration in rural areas”. The CFM will continue to study important issues of relevance to immigration policy, to issue opinions and recommendations in these matters and to launch pilot projects. Some of the positions adopted by the CFM or its predecessors are mentioned elsewhere in this report.

51. ECRI strongly recommends that the Swiss authorities reinforce the Federal Commission for Migration Issues, ensuring that it has sufficient human and financial resources to fulfil its role. It also recommends that the authorities take due account of the Commission's opinions and recommendations.

II. Discrimination in various fields

Employment

52. The problem of racial discrimination in employment, whether concerning access to jobs or, above all, to vocational training, such as apprenticeships, has been the subject of a number of studies. These studies all show that a young person seeking an apprenticeship who is of immigrant origin or Black is more likely to be turned down than a young person of Swiss origin. More generally, unemployment is nearly three times higher among non-citizens than within the Swiss population. This particularly affects persons originating from the Balkans and from non-European countries.
53. Racial discrimination also extends to earnings, access to training and promotions. Such discrimination may be direct but can also take indirect forms resulting from a series of apparently neutral factors which nonetheless disadvantage immigrants. Lack of recognition of qualifications obtained outside Switzerland or the European Union is another factor which makes it difficult, if not impossible, for candidates to obtain jobs corresponding to their real qualifications. One means of combating indirect discrimination appears to be providing classes to help immigrants improve their proficiency in the local language, an important stimulus to integration into the labour market.¹⁶
54. ECRI notes that the Federal Law on Vocational Training provides that the Confederation may encourage the adoption of vocational training measures in favour of disadvantaged groups and regions, which includes measures for the integration into vocational training of young people experiencing educational, social or linguistic difficulties. Since young non-citizens constitute a disadvantaged group, in particular on account of the prejudice and stereotypes concerning them and the resulting discrimination, it would be desirable to envisage taking positive action aimed at facilitating their access to employment. It is encouraging to note that the State Secretariat for the Economy (SECO) has initiated a debate aimed at raising employers' awareness of integration issues, although no tangible steps have been taken so far. At the same time, a number of measures have been launched at the level of the Regional Placement Offices (ORP) in order to optimise training, counselling and recruitment activities from the standpoint of intercultural skills.
55. ECRI notes an interesting initiative in the form of the "Smart Selection" pilot project run by the Swiss Society of Business Employees, which is aimed at preventing discrimination when hiring apprentices by allowing them initially to file anonymous job applications with the companies participating in the project. Mention can also be made of personalised vocational training on a "case

¹⁶ See also below "Vulnerable/Target groups - Non-citizens".

management" basis, which makes it possible to facilitate young persons' access to employment and to take account of young immigrants' backgrounds. There should be more initiatives of this kind all over Switzerland.

56. ECRI recommends that the Swiss authorities pursue their efforts to combat direct and indirect racial discrimination in employment matters and to foster cultural diversity within businesses in co-operation with the key players in this field, in particular the trade unions, employers' organisations and vocational training bodies.

Education

57. ECRI notes that, according to a 2006 PISA study, in Switzerland immigrant children from socially and culturally disadvantaged families, in which the language used in school is not spoken, are less likely to perform well than their fellow pupils from more prosperous backgrounds. Children of immigrant origin also lag behind those of Swiss origin, although nearly twice less so than first generation immigrant children. Disregarding social and economic status, origin and language nonetheless have a significantly negative effect on pupils' performance in Switzerland: young immigrants and children of immigrant parents respectively scored 39 and 14 points lower in the PISA test than students of Swiss origin. The performance of those who did not speak the test language at home was 27 points lower. Language and origin can frequently have a cumulative impact.¹⁷ However, the Swiss authorities have drawn attention to another study carried out by the Federal Office of Statistics in 2005. They point out that, according to this report, second-generation immigrants are often more successful than native Swiss in the academic field.
58. ECRI notes with interest that the systems for integrating immigrant pupils into regular classes have been reinforced in recent years. These systems vary from one canton to another, but increasingly every effort is made to ensure that children can follow mainstream schooling. For instance, there are reception classes for accelerated teaching of the local language, which immigrant children take in addition to the regular classes. In view of the above observations on the difficulties encountered by immigrant children who do not speak the language of instruction at home, it can be seen to be essential to provide support classes for these children, particularly for the purpose of language-learning.
59. The Swiss Conference of Cantonal Directors of Public Education reports that there can sometimes be manifestations of racism in a school context. In such cases action may be taken through mediation or a social worker. Should racism prove to be of a serious or recurring nature, the schools inspector would be required to intervene.
60. The Swiss authorities have fostered and themselves developed educational projects aimed at recognising the beneficial impact of diversity, combating racism and violence, and commemorating and studying the Holocaust, in particular on the occasion of Holocaust Memorial Day - 27 January, related questions and human rights in general. Many initiatives have been taken, which differ from one canton to another, and even from one school to another. A number of cantons have established courses to train teachers in dealing with cultural differences. The Federal Service for Combating Racism has entrusted the Education and Development Foundation with selecting, for support, school projects for the teaching of human rights and for the fight against racism. The Federal Service provides the Foundation with financing for these purposes.

¹⁷ PISA 2006: "Les compétences en sciences et leur rôle dans la vie" (Science competencies for tomorrow's world), national report, Federal Statistics Office (OFS), Neuchâtel, 2007

61. In all cantons children of foreign origin can follow courses in their language and on their culture of origin in addition to their regular curriculum. Usually premises and infrastructure are provided by the schools and many cantons offer organisational support, but it is the body responsible for the courses (often supported by the country of origin) which provides and finances the teaching.
62. ECRI recommends that the Swiss authorities pursue and intensify their efforts to establish a school system that guarantees all children of immigrant origin whose mother tongue differs from the language of instruction equality of opportunity in access to education, in particular higher education, and ultimately access to employment. In this connection, ECRI draws attention to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.
63. ECRI recommends that the Swiss authorities adopt a more systematic approach to teaching of the languages and cultures of origin and provide for this possibility in all schools attended by children of immigrant origin.

Housing

64. Various studies conducted over the past few years report problems of direct discrimination in access to housing, affecting a range of groups including immigrants, especially those without long-term residence status, Blacks, Muslims and persons from the Balkans.¹⁸ Everyone acknowledges that there are cases of direct discrimination in this area, the difference being that some, particularly the anti-racist NGOs, deplore the fact whilst others take the view that there is nothing illegal about it. In housing matters, the widely prevailing view is that a private landlord is entirely free to choose and may do so on any grounds whatsoever, including for example a person's skin colour or religion. In other cases, discrimination exists but is concealed under specious arguments. It may also take the form of price-fixing or unfavourable conditions for foreign tenants or purchasers. For instance, the studies show that non-nationals usually pay higher rents for property of less good quality than Swiss tenants.
65. As there are no legal provisions clearly and effectively prohibiting racial discrimination¹⁹ and as the housing market is rather tight in some parts of Switzerland, there are no real safeguards against abuse and discrimination in access to housing.
66. The authorities have launched some pilot projects in an attempt to resolve some of the problems encountered by immigrants in access to housing. The "urban projects" are designed to improve the general quality of life and prevent integration deficits in urban neighbourhoods and medium-sized towns. They are among the 45 integration measures adopted by the Federal Council in August 2007.²⁰ The purpose is to "improve the quality of life and promote social integration in sensitive neighbourhoods". By means of integrated measures based on a concerted approach, the intention is to prevent the formation of ghettos, improve the standard of security in residential areas and pull society together. The projects are to last four years, then to be assessed with a view to a possible extension. The Federal Service for Combating Racism is involved in these projects and supports applications demonstrating a genuine wish to deal with the conflicts, tensions and direct or indirect discrimination that can occur in urban neighbourhoods.

¹⁸ On access to housing for Travellers and Yenish, see below: "Travellers and Yenish community".

¹⁹ See above, "Legislation prohibiting racial discrimination".

²⁰ See below, "Non-citizens".

67. ECRI urges the Swiss authorities to take steps to combat racial discrimination in access to housing, along the lines of the “urban projects”, while taking care to ensure that these measures are designed to guarantee equal opportunities for vulnerable groups such as persons of immigrant origin in access to housing. Such measures should be accompanied by awareness campaigns on the problem of discrimination aimed at the key stakeholders in housing.

Health care

68. Where access to health care is concerned, the Swiss authorities have found that there is a lack of equal opportunities for non-citizens, for several reasons, including socio-economic factors and sometimes a lack of information about health care among migrants, a lack of intercultural skills among health-care staff and linguistic communication difficulties. According to several studies, this inequality in terms of access and treatment in health-care matters is also partly due, although the extent is hard to identify, to racist prejudice and racial discrimination.

69. ECRI is pleased to note that in view of the finding that non-citizens do not have equal opportunities in access to health care, the Swiss authorities have decided to launch phase II (2008-2013) of their federal “Migration and Health” strategy launched in 2004. This strategy is intended to improve the health-care context in which migrants live in Switzerland and to establish equal opportunities with regard to the health-care system. The Federal Office for Public Health designed phase II in co-operation with the Federal Office for Migration (OFM) and the Federal Commission for Foreigners - which is now the Federal Commission for Migration Issues - on the basis of the experience acquired during phase I and the recommendations made during assessment. The higher aim of the strategy is to help eliminate avoidable factors likely to hamper good health, and thus to help improve migrants’ living conditions. The purpose is also to improve the migrant population’s opportunities, by comparison with the Swiss-nationality population, to make full use of its health potential.

70. ECRI also notes with interest the project carried out in 2006 and 2007 in the Olten Cantonal Hospital with the Swiss Red Cross and the Swiss Society for Health-care Policy with financial support from the Federal Service for Combating Racism. Under this project, the different forms of racial discrimination that can occur in hospital were listed and a catalogue of measures for combating them was drawn up. Practical steps were also taken, such as heightening staff awareness, taking account of transcultural skills in recruitment, setting up an interpreting service and introducing codes of conduct and penalties.

71. ECRI recommends that the Swiss authorities continue to take steps to combat racial discrimination in access to health care, particularly as part of the federal “Migration and Health” strategy, with the accent on informing the vulnerable groups concerned, raising health-care staff awareness and providing training in intercultural skills. Provision should also be made for appropriate penalties in the event of proven racial discrimination in access to health care.

Goods and services for the public

72. ECRI notes the existence of allegations of racial discrimination regarding access to bars, restaurants and discotheques, primarily targeting Blacks and persons originating from the Balkans. It deals with this question and makes recommendations on this point in the above section on the legal provisions against racial discrimination.

73. ECRI notes that, in general, insurance companies take the criteria of the insured person’s nationality into consideration when calculating car insurance premiums

in Switzerland. This practice, introduced in recent years, has given rise to legal and other studies, which conclude that calculating premiums on the basis of the risk for each nationality makes no sense. These comparative studies show that in general those belonging to some nationalities are required to pay more than others, and the amounts are particularly high for people originating from the Balkans, southern Europe, Africa, South America or Asia. According to these studies, even if the figures used were objective, they are unquestionably not reasonable, since the additional premium amount payable by a national of a given State varies completely depending on the insurance company concerned. The insurance companies' available statistics are not sufficiently reliable to serve as a basis for determining different amounts, as can be seen from the considerable price variances between insurers that can be noted for people of the same nationality. Comparative tests have shown that, from one insurance company to another, persons of the same nationality (Italian in the case under consideration) can pay 0% to 27% more than a Swiss citizen. In addition, the calculation method takes absolutely no account of the time the person has spent in Switzerland. Despite many warnings by anti-discrimination specialists in Switzerland and the lodging, in 2007, of a petition and a parliamentary initiative calling for an end to this practice, the Swiss authorities deemed that it was not discriminatory since it was based on the objective statistics of the insurance companies concerned. The Swiss authorities have further indicated that if an insurance company uses nationality as a criterion in a tariff model, the following conditions must be fulfilled: The tariff must be set according to accepted principles of insurance mathematics; classifications must be factually correct and risk-related; classifications must be regularly checked and adapted if necessary; classifications and tariffs must be based upon the companies' statistics and, when appropriate, on aggregated statistics. If not, the insurance control authority will intervene to investigate the possibility of abuse. The Swiss authorities consider that variations between insurance companies' tariffs are the result of a range of factors and an expression of market mechanisms. They stress that the current system corresponds to the will of the legislator to support competition and risk-adequate calculation. However, in view of the criticisms voiced by several sources, including anti-discrimination specialists in Switzerland, ECRI believes that it is necessary to look closely into the matter again to ensure that the current car insurance market does not have any discriminatory impact on those insured on the grounds of their nationality.

74. ECRI strongly recommends that the Swiss authorities review the system of car insurance premiums in force in Switzerland, which makes it possible to vary the premium amount payable according to the driver's nationality, and take steps to end all identified discriminatory practices based on nationality in this field.

Naturalisation

75. In its third report ECRI hoped that Parliament would swiftly enact a law on citizenship facilitating naturalisation for second- and third-generation persons of immigrant origin. It also urged the authorities to examine how to improve the current system for granting citizenship in order to ensure that there was no room for discriminatory and arbitrary practices. It asked that at the very minimum, appeal procedures should be put in place to allow applicants for naturalisation to query the legality of decisions taken by popular vote or by local political bodies.
76. In Switzerland the naturalisation procedure involves the federal authorities, the cantons and the municipalities. Each of these entities has its say in agreeing or objecting to the naturalisation of a person applying for it. The criteria to be met in order to be naturalised vary from one canton to another and one municipality to another, but generally speaking, the naturalisation procedure remains long and complex in Switzerland.

77. ECRI has learned that the bills designed to facilitate the acquisition of citizenship by second- and third-generation persons of immigrant origin, which it recommended enacting as soon as possible, were rejected by the Swiss people in the referendum of 26 September 2004. The UDC party had conducted a xenophobic campaign in favour of a “no” vote in this referendum, which had a certain impact on the outcome; this question is discussed below.²¹
78. In some municipalities the naturalisation procedure requires a local vote, which means that the decision to grant citizenship or not is taken by direct democracy. The Federal Tribunal has intervened several times to set aside decisions taken in this way on the grounds that they are discriminatory, particularly in two key judgments of 9 July 2003. In its judgment 129 I 217 of 9 July 2003, it held that the refusal to naturalise applicants from the former Yugoslavia was contrary to the prohibition of discrimination provided for in Article 8.2 of the Federal Constitution. In its judgment 129 I 232 of 9 July 2003, the Federal Tribunal set aside the request for a referendum “for democratic naturalisations”, which was intended to enable municipal voters alone to decide whether or not to grant naturalisation, instead of specialist committees in municipal councils. The Federal Tribunal emphasised that any refusal to grant naturalisation must include a proper statement of the reasons, which was not possible in the event of a popular vote.
79. A request for a referendum (“*initiative populaire*”) designed to counter the Federal Tribunal’s decisions was launched in 2006. It asked for the municipalities to be able to decide independently which body was empowered to grant municipal citizenship, and for this body’s decisions to be final, with no possibility of appeal. This request was rejected by more than 63% on 1 June 2008.
80. Since the Federal Tribunal’s 2003 judgments, the cantons and municipalities whose regulations did not comply with the court’s requirements have started to amend them to bring them into line with these standards, and at the time of writing this report, many of them had taken the necessary steps. The Swiss authorities have indicated that, following the two judgments above, it is no longer possible for citizens to vote on naturalisations by secret ballot. Furthermore, ECRI is pleased to note that a new federal law which came into force on 1 January 2009 provides that all negative decisions on naturalisation must state the reasons. Under this new law, the cantons will have to set up judicial authorities responsible, as cantonal appeal bodies, for hearing and deciding appeals against negative decisions on the granting of ordinary naturalisation. Lastly, the law compels the cantons to respect the private lives of the persons concerned during the naturalisation procedure. The new law does not, therefore, challenge the actual principle of decisions on naturalisation being taken by municipal assemblies. However, it introduces further safeguards, which ECRI welcomes.
81. In its 2007 study on “Discrimination in naturalisation”, the Federal Commission against Racism described several cases of arbitrary and discriminatory decisions taken directly by voters or by a municipal assembly. For example, applications by persons from the former Yugoslavia region and persons of Muslim religion are rejected more often than others because of persistent prejudice against them, regarding them as not “integrated”. Federal legislation requires verification that applicants for naturalisation have become integrated into the Swiss community and accustomed to the Swiss lifestyle and practices. In several cases where naturalisation was refused by direct democracy, the courts have intervened to sanction discrimination. In the light of its study and of the courts’ case-law, the Federal Commission against Racism advised providing for an executive body elected by the cantonal parliament or the municipal assembly to take decisions

²¹. See “Racism in political discourse”.

on naturalisation and establish specific naturalisation criteria which leave no room for arbitrary choices.

82. ECRI notes that granting or denying citizenship is in some ways a very technical matter, but also, under Swiss law, requires verification of whether a person is “integrated or not”, a question which leaves plenty of scope for subjective views and therefore calls for a certain amount of training. It consequently considers that it would be preferable to devise procedures enabling specially trained bodies to take these decisions. This would avoid discriminatory decisions which, even if subsequently set aside, have an adverse impact on the applicant and also on the general atmosphere in the municipality concerned.
83. ECRI reiterates its recommendation that the authorities amend the law on citizenship to facilitate the naturalisation of second- and third-generation persons of immigrant origin.
84. ECRI urges the Swiss authorities to ensure that the statutory requirement to duly state the reasons for negative decisions on naturalisation, to secure a right of appeal to the courts and to protect the private lives of applicants for naturalisation, which came into force on 1 January 2009, is fully complied with in practice.
85. Given the risk of discrimination and arbitrariness in naturalisation decisions taken by direct democracy, ECRI urges the Swiss authorities to seriously consider reversing the system of a vote by the municipal assembly in the cantons and municipalities where such a system still exists with regard to applications for naturalisation.

III. Racism in public discourse

Racism in political discourse

86. In its third report ECRI asked the authorities to raise public awareness of the existing problems of racism and discrimination and the need to combat them. It urged the authorities to react firmly against any manifestations of racism or xenophobia in the discourse of certain politicians and political parties.
87. There are very few far-right parties in Switzerland, with marginal political influence, especially at federal level, and with few, if any, elected members at local level.²² Some members of these parties have occasionally been prosecuted for their racist remarks or leaflets. ECRI hopes that the authorities will remain vigilant with regard to these parties.
88. ECRI is deeply concerned at the changes in the tone of political discourse in Switzerland since the publication of its previous report. These changes are very closely linked to the growth of the UDC party (*Union démocratique du centre / SVP Schweizerische Volkspartei*). In the latest parliamentary elections at federal level, the UDC obtained the highest score: 29% of the votes. With 62 elected members of the National Council – the second chamber of parliament – (55 during the 2003 parliamentary term), the UDC now occupies a significant position in Swiss politics. This party alone has made “foreigners” its key issue. The programme, positions, campaigns, posters and other material produced by the party are described by all anti-racism experts as xenophobic and racist.
89. There have been many occasions in recent years on which the UDC has promoted intolerant images and remarks in recent years. There have been excessive and discriminatory generalisations on the basis of isolated cases, trivial

²² On the Neo-Nazi groups and other extreme right-wing movements outside political life, see below.

news items or approximate, manipulated statistics. The main targets of these methods are foreigners, especially young foreigners, asylum seekers, Blacks, Muslims and Roma. Foreigners as a whole are accused of abusing social welfare benefits and being the main perpetrators of crime in Switzerland. In particular, young foreigners, especially those from the Balkans, are accused of all forms of crime ranging from very minor to most serious offences, on the basis of occasional incidents relayed by the media. Asylum seekers are generally accused of not being real refugees and abusing the asylum procedure and social welfare benefits. Blacks are generally described as drug traffickers. Prejudice against Muslims is reflected in allegations that there is a risk of Switzerland being “swamped” by Islam, and Muslims are frequently categorised as fundamentalists or terrorists. More recently, Roma were also targeted by intolerant remarks during the campaign for the federal referendum on the extension of the free movement agreements with the European Union to Bulgaria and Romania. The UDC poster in favour of the “no” vote showed huge black crows tearing Switzerland to pieces above the words “Open the door to abuse? No!”.

90. Racist discourse is not only reflected in the party’s remarks, but also in the images it uses to illustrate its views, particularly on posters and newspaper advertisements. For example, the drawing of white sheep chasing a black sheep from Switzerland served to illustrate the 2007 electoral campaign and justify the UDC’s position that all foreign criminals should be deported with their families. During campaigns on naturalisation issues, a poster appeared in the streets portraying Osama Ben Laden on a Swiss identity card, as well as another depicting dark hands grabbing Swiss passports. To date, despite complaints to the prosecuting authorities against posters of this type, no criminal penalties have been imposed on those who produced them. As indicated in other parts of this report, the UDC has tabled motions in Parliament and launched requests for referenda threatening or even directly infringing the fundamental rights of foreigners. The UDC has also launched repeated attacks with a view to abolishing the anti-racist provisions of the criminal law and the Federal Commission against Racism.
91. Although they are often rejected by Parliament and the population, these repeated attacks by UDC members against foreigners’ fundamental rights and against the prohibition of racism and xenophobia have created a deep sense of unease among minority communities and in Swiss society generally. In some cases, the party’s racist and xenophobic discourse has preceded some of its election and referendum victories, which indicates that anti-foreigner discourse has an impact on political choices.²³ The representatives of human rights organisations and organisations upholding immigrants’ interests have expressed their serious concern, and the representatives of the minorities most frequently targeted have even expressed their fear that the situation may deteriorate further, with the risk of encouraging intolerance and violence against them by members of the majority community. Although xenophobic pressure is generally felt recently to have diminished slightly particularly since the failure of the former UDC leader to be re-elected as a member of the Federal Government, the fundamentally anti-foreigner positions expressed at such a significant political level have served, in ECRI’s view, dangerously to polarise public debate.
92. Against this background, the response of other political parties assumes particular importance. One is entitled to wonder how the other major political parties behave in response to this rhetoric. As indicated by a study commissioned by the Federal Commission against Racism on foreigners and ethnic minorities in the election campaign, analysing the media coverage (by the press and

²³ For an example in this report, see: “Discrimination in various fields: – Naturalisation”.

television) of the 2007 federal elections²⁴, the UDC's openly xenophobic positions do not meet with indifference in political circles and the media. Many people condemn and combat them. However, the study also shows that the response at a national level to these xenophobic tends to fall short of direct refutation. The tendency is rather to describe them as simplistic, exaggerated or electorally opportunist. The danger of such an approach in ECRI's view is that it tends to validate the original remarks. As a result, there is now permanent talk of "the high crime rate among foreigners" or their "integration deficit", without the ideas themselves being challenged by evidence to the contrary. Furthermore, as there are no real penalties for politicians who disseminate racist and xenophobic ideas, their views make headway in Swiss public opinion with serious effects on the atmosphere surrounding the target groups in Switzerland.

93. The above-mentioned study also shows that foreigners and ethnic minorities are very limited in the contribution they can make to these debates. With only a few exceptions at local level, non-citizens are not entitled to vote in Switzerland. The organisations upholding their rights do not have enough support to make themselves heard effectively. In a situation in which increasingly restrictive measures are proposed with regard to almost 21% of the population in Switzerland, it is essential in ECRI's view that there should be an adequate outlet for the public expression of their concerns on these matters. However, the authorities have indicated that foreigners can be members of the Federal Commission against Racism and the Federal Commission for Migration Issues and that they make up 45% of the latter.
94. ECRI is pleased to note that the federal authorities regularly and openly oppose various parliamentary motions and requests for referenda launched or supported by the UDC, explaining that they infringe or are likely to infringe human rights, as in the case of the request for a referendum intended to ban the construction of minarets.²⁵ The Swiss people themselves, although 29% voted for this party, reject some of its more extreme positions in referenda. The Federal Commission against Racism, the Federal Commission for Migration Issues and other bodies constantly warn the general public about this threat to the country's social cohesion.
95. ECRI reiterates that unrestrained racist and xenophobic political discourse inevitably leads to a range of serious consequences – some of which can already be observed in Switzerland²⁶ – including ill-conceived proposals which could disproportionately affect particular groups or their capacity for exercising their human rights in practice. Such discourse risks the undermining of social cohesion and an incitement to racial discrimination and racist violence.²⁷
96. ECRI urges the Swiss authorities urgently to pursue and reinforce their efforts to combat racism in political discourse.²⁸ It refers on this point to the recommendations made above on the application of Article 261bis prohibiting racist remarks, which should be applicable to elected political representatives

²⁴ Linards Udris, lic. En phil, Dr. Patrik Ettinger, Prof. Dr. Kurt Imhof, Université de Zurich, Département de recherche opinion publique et société (Fög), Les étrangers et les minorités ethniques dans la campagne électorale, une analyse de la couverture médiatique des élections fédérales de 2007.

²⁵ See below: "Muslim communities".

²⁶ See above: "Article 261bis of the Criminal Code: the criminal provision against racism" and "Discrimination in various fields", and below, "Racist violence".

²⁷ See ECRI's Declaration on the use of racist, antisemitic and xenophobic elements in political discourse (adopted on 17 March 2005).

²⁸ See also ECRI's recommendation to ratify the additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems, in the "International legal instruments" chapter above.

who make such remarks or deliberately disseminate images with racist connotations.

Racism in the media

97. In its third report ECRI recommended that the Swiss authorities take steps to counter the generally negative climate of opinion surrounding the issue of asylum seekers and refugees, particularly by sensitising the media to the need to address the question in a balanced fashion and without resorting to language and propaganda likely to exacerbate public prejudice and hostility.
98. Racism in the media should be addressed together with racism in political discourse, as described above. In view of the increase in racist and xenophobic remarks and images produced by the members of a political party in government, the media, which are naturally required to relay and comment on politicians' positions, have a special responsibility and should make every effort to avoid and combat all forms of racist and xenophobic language. According to the above-mentioned study on the media coverage of the 2007 federal elections, the Swiss media made efforts to criticise and distance themselves from intolerant political views. However, they themselves are apparently not free from the danger of putting across racist stereotypes and prejudice. Newspapers, particularly weekly ones, sometimes resort to sensationalism, publishing articles conducive to the spread of racist stereotypes and prejudice. The then Federal Commission for Foreigners (now the Federal Commission for Migration Issues) has also pointed to the over-representation of negative news items on immigrants in the media.
99. According to several sources,²⁹ a widespread and recurring problem in the Swiss media is the practice of mentioning the origin of a person suspected or convicted of a criminal offence even when this information is irrelevant. With a concern for transparency, the police admittedly give the media "objective" information on suspects, including their age and nationality, which the media pass on without always questioning its relevance. In some cases, however, this approach seems much harder to justify. ECRI is particularly concerned at reports that not only is a person's nationality disclosed but also, in some cases, their region of origin, such as the "Balkans", "the former Yugoslavia" or Africa, and their skin colour or, if they are a Swiss citizen, their foreign origin. A new category also seems to have appeared in media articles: that of "new Swiss citizens" or "naturalised Swiss citizens". The sole purpose of this category seems to be to underscore the fact that presumed offenders are not "native Swiss citizens", which fuels stereotypes and prejudice about the link between crime and ethnic origin.
100. Swiss journalists have a code of professional ethics in the form of a Declaration. According to paragraph 8 of the Declaration of Journalists' Duties and Rights, on respect for human dignity, "journalists shall avoid all discriminatory references, whether in words, images or sound, to a person's ethnic origin, nationality, religion, (...)". The guidelines concerning this Declaration specify that "if a news item concerns a criminal offence, information concerning ethnic origin, religion (...) are admissible provided that they are necessary for an understanding of the report. References to nationality should not give rise to any form of discrimination: where they are not systematic (and therefore also applied to Swiss nationals), they must meet the same restrictive conditions as the other items of information. Special attention will be paid to the fact that these items of information can strengthen prejudice against minorities". The Swiss Press Council can receive complaints if a journalist breaches this Declaration. In 2005, for example, it intervened in connection with an islamophobic reader's letter,

²⁹ See for example several articles published in *Terra Cognita*, *Revue suisse de l'intégration et de la migration*, Les médias, automne 2007, N° 11.

pointing out that “in the current climate of hostility to Islam and Muslims, editors must be particularly vigilant with regard to readers’ letters containing discriminatory material, even in latent form. The fact of receiving a large number of discriminatory letters does not warrant publishing one of them. Where necessary, the matter must be dealt with as such, in compliance with the rules of journalism. In publishing a reader’s letter that freely expressed islamophobic views, the magazine concerned breached paragraph 8 of the Declaration of Journalists’ Duties and Rights”.³⁰

101. ECRI is pleased to note that a number of initiatives have been taken to combat racism in the media. In April 2008, for example, the media company SRG SSR, which comprises several television channels, radio stations and Internet platforms, organised a week on “*Nous autres*” (“Us others”) and the integration of migrants in Switzerland. ECRI draws attention to the recommendations on integration and the media made by the Federal Commission for Foreigners in 2007, which open up interesting avenues for improving the media image of immigrants, training media professionals in these issues and reaching out more effectively to immigrant audiences.
102. ECRI encourages the Swiss authorities to pursue and reinforce their efforts to alert the media, without infringing their editorial independence, to the need to prevent reports from contributing to an atmosphere of hostility and rejection towards members of minority groups. It recommends that they initiate a discussion with the media and the members of the relevant civil society organisations on the best means to use for the purpose.

Racism in sport

103. In recent years incidents of racist and antisemitic verbal violence have been recorded in football stadiums in Switzerland and elsewhere when football fans attended matches at their opponents’ stadiums. The far right is said to be represented in some supporters’ clubs. These incidents have prompted the authorities to take steps against racism in football. In particular, ECRI notes with interest that the Swiss authorities took steps during the European Football Cup, EURO 2008, held in Switzerland and Austria, both at football matches and during these sports events. Some of these initiatives were in fact extended after the end of the Cup. The Federal Service for Combating Racism finances various projects to prevent racism at sport events and in sport clubs and it has published a booklet on “Xenophobia and racism among football- and ice-hockey supporters”. The Federal Office for Sport opened a centre for integration in 2009.
104. ECRI strongly encourages the Swiss authorities to pursue and reinforce their efforts to combat racism in sport. It draws their attention to its General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport.

Neo-Nazi groups and other extreme right-wing movements

105. ECRI is concerned to learn that there are active neo-Nazi and extreme right-wing groups in Switzerland.³¹ They regularly organise public meetings, including concerts at which Nazi songs are sung. It is hard to give exact figures, but as a whole, these groups number several hundred people. The far right is also represented to some extent among members of the army, although it is difficult to gauge the extent of this problem accurately.

³⁰ Decision No. 30/2005 of the Swiss Press Council of 21 May 2005, on www.presserat.ch.

³¹ On acts of violence committed by the extreme right-wing movements, see below: “Racist violence”.

106. The Swiss authorities say that the situation regarding the presence of the far right in Switzerland has not changed much in recent years. Skinheads are apparently increasing in number and displaying more openly aggressive behaviour than before. Extremist movements are apparently also tending to become more politicised. They advocate a heightened form of nationalism hostile to foreigners and to their integration, particularly by demonstrating on 1 August, Switzerland's national day.
107. ECRI is pleased to learn that the Federal Council's strategy to combat right-wing extremism is based on three key components: firstly, making use of the entire legal arsenal available; secondly, tolerating no violence, racial hatred or xenophobia in Switzerland; and thirdly, co-ordinating the preventive and punitive measures applied at national level by the Confederation, the cantons and the municipalities, and at international level. ECRI hopes that this strategy will be fully implemented through the provision of the necessary human and financial resources.
108. ECRI also notes with interest the work of the special Extremism Unit in the army, which co-ordinates efforts to reduce extremism in the army. This unit is at the disposal of members of the armed forces doing their military service, but also of their parents and families, and can receive reports of extremist incidents. The unit provides advice and training courses to combat extremism in the army more effectively.
109. In 2004 a comprehensive study programme was launched to identify the causes of right-wing extremism and the possible counter-measures.³² The Federal Service for Combating Racism has also published a booklet on "Young people and right-wing extremism: victims, activists or repentant participants" and another on "Combating right-wing extremism: effective measures and tools for municipalities". The two publications summarise the results of the study programme for the broad public and for decision-makers at the communal and cantonal level and thus make its results accessible for practical implementation. ECRI hopes that all the good practices and recommendations stemming from this research will receive the authorities' close attention and inspire them to implement practical measures.
110. ECRI strongly recommends that the Swiss authorities pursue and reinforce their efforts to closely monitor far-right activities and organisations, and intervene to condemn in moral terms, but also prevent and punish, expressions of incitement to hatred against persons or groups of persons on account of their ethnic origin or religion, whether in the form of demonstrations or concerts. In ECRI's view, legislation must provide for the possibility of dissolving organisations that promote racism and must set up machinery punishing de facto groups for their racist activities.³³

IV. Racist violence

111. ECRI notes that cases of racist violence are inventoried by the bodies monitoring the situation in this respect in Switzerland. Such cases include acts aimed at destroying persons' property for reasons such as race, colour, language, national or ethnic origin, religion and nationality. Still more disturbing is the information that persons are physically attacked in the street for the same reasons. The data

³². National 40+ research programme "Right-wing extremism – causes and counter-measures" (PNR 40+), Swiss National Fund for Scientific Research.

³³ See ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, especially paragraphs 17 and 18.g, as well as the corresponding paragraphs in the explanatory memorandum. See also above: "Article 261bis of the Criminal Code: the criminal provision against racism".

collection system on the application of criminal law does not give a full picture of the situation or identify the perpetrators and the target groups, or, above all, the outcome of the investigation and judicial proceedings in each case.

112. The authorities say that acts of racist violence are sometimes committed by young people belonging to far-right movements.³⁴ They emphasise that the incidents inventoried often take the form of violent clashes between groups of right-wing extremists and groups of non-citizens, who are said to engage in mutual provocation at festivals or other public events. However, ECRI notes that there are allegations of very violent attacks by groups against isolated individuals on the sole basis of their origin, but that the police and other competent authorities do not pay the requisite attention to these cases. ECRI notes with concern that according to the anti-racist NGOs, a number of victims do not report racist attacks for fear of reprisals and because they lack confidence in the police, and sometimes also because they are living illegally in Switzerland. It also appears that the police do not always take note of the racist aspect of an act of violence even when the victim or witnesses report it to them.³⁵
113. ECRI emphasises, as the European Court of Human Rights has repeatedly pointed out, that racist violence is particularly destructive of fundamental rights and that it is essential to identify it and punish it accordingly. In the *Šečić v. Croatia* judgment of 31 May 2007, the European Court of Human Rights held that treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. It is therefore important to ensure that the authorities conduct detailed investigations into acts of racist violence and duly punish them, particularly by taking full account of the perpetrators' racist motivation.
114. ECRI recommends that the Swiss authorities find ways of improving the content and implementation of criminal legislation in order to combat racist and xenophobic violence.³⁶ It recommends that they step up their efforts to train law enforcement officials in this legislation, including police officers, prosecutors and judges, in order to ensure that no incidents of racist or xenophobic violence are disregarded or go unpunished.
115. ECRI recommends taking steps to ensure that the police conduct detailed investigations into acts of racist violence. Such measures may include, for example, establishing a unit specialising in such offences in each division of the police force, or publishing circulars and other documents to alert the police and prosecuting authorities to the need to vigorously combat these offences.
116. As regards the prevention of racist violence, ECRI recommends that the authorities pursue their efforts to make schoolchildren aware of the need to combat racism, especially racist violence and the far right. In this respect, it draws their attention to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.

³⁴ See above: "Neo-Nazi groups and other extreme right-wing movements".

³⁵ On this point, see below: "Police conduct".

³⁶ See also above: "Article 261bis of the Criminal Code: the criminal provision against racism".

V. Vulnerable/Target groups

Muslim communities

117. In its third report ECRI recommended that the authorities take steps to combat prejudice and discrimination against Muslim communities, particularly as regards practical issues connected with the practice of their religion.
118. Muslims, who are estimated to number between 350 000 and 400 000 in Switzerland, encounter manifestations of racism and intolerance, which are described in several parts of this report. The Swiss authorities themselves consider that there was a significant increase in acts of intolerance with regard to members of Switzerland's Muslim communities between 2002 and 2006.
119. In particular, ECRI is concerned to learn that, in recent years, some political parties, including the UDC, have considerably exploited and encouraged prejudice and racist stereotypes concerning Muslims within the majority population, not only in their rhetoric but also in political campaign posters.³⁷ As a result some parts of public opinion may equate the entire Muslim population with terrorists and religious extremists. The fear of seeing Switzerland "swamped by Muslims" is also exploited. In some cases, this prejudice apparently leads to discrimination, notably in employment, since Muslims are refused jobs because of the suspicion surrounding them. In particular, women who wear the Islamic headscarf encounter difficulties of access to jobs, housing and goods and services for the public. Muslims are also vulnerable to discrimination in matters of naturalisation.³⁸
120. To take but one example of hostility towards Muslims displayed in recent years, reference can be made to the federal popular initiative "against the construction of minarets", aimed at adopting through referendum a new provision in the Federal Constitution, whereby "the construction of minarets is forbidden". This initiative obtained the 100 000 signatures required and will therefore be submitted to the people and the cantons. It has, however, been deemed clearly incompatible with freedom of religion by the Federal Council, and hence in breach of the Swiss Constitution and international law as binding on Switzerland, and the Federal Council has called on the people and the cantons to reject it. The Federal Commission against Racism itself has stated that the initiative "defames Muslims and discriminates against them." However, it seems that, under Swiss law, only a popular initiative to amend the Constitution which violated "mandatory international law" (*jus cogens*) would be invalid. ECRI regrets to learn that an initiative which infringes human rights can thus be put to the vote and very much hopes that it will be rejected. It regrets in particular the tone taken by the political discourse of the initiative's supporters with regard to Muslims, as it largely contributes to their stigmatisation and to the reinforcement of racist prejudice and discrimination against them by members of the majority community.
121. The Muslim communities' representatives point out that, despite this hostile atmosphere maintained by certain political parties and propagated by certain media, dialogue with the Swiss authorities is generally good, and that, although there is still room for improvement, constructive discussions take place on issues relating to religious practice such as the religion's recognition, places of worship and Muslim burial grounds within cemeteries, or other questions linked to intercultural dialogue. ECRI notes, however, that it is difficult to assess the overall situation, since these matters come within the competence of the individual cantons or municipalities.

³⁷ See above "Racism in public discourse - Racism in political discourse".

³⁸ On the subject of discrimination against Muslims, see above: "Discrimination in various fields".

122. ECRI strongly recommends that the Swiss authorities pursue and step up their efforts effectively to counter racist stereotypes and prejudices and other manifestations of religious intolerance by certain members of the majority population with regard to members of the Muslim communities. In this connection, it draws their attention to its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims, which sets out detailed guidelines on the measures to be taken in this area.
123. ECRI recommends that the Swiss authorities pursue their efforts and dialogue with Muslim representatives in order to maintain progress in the field of Muslims' rights regarding the exercise of their freedom of religion.

Travellers and the Yenish community

124. In its third report ECRI recommended that the authorities take further steps to ensure that sufficient permanent and transit sites be provided across Switzerland for members of the travelling communities.
125. In a report published in 2006 the Federal Council drew attention to the continuing lack of permanent and transit sites for the 2 500 members of these communities wishing to adopt or preserve a travelling lifestyle. They are mostly Yenish and some of them are Sinti. This report concluded with a description of the possibilities for future action. It stated that actively promoting mutual understanding remains a priority. It recognised the importance of making provision for the construction of permanent and transit sites on the basis of existing legislation and the Federal Tribunal's case-law requiring the competent authorities (federal, cantonal and municipal) to take account of Travellers' needs in zone planning. The federal authorities have indicated that they support the creation of sites for Travellers, notably through the Foundation "Protecting the future of Swiss Travellers", which they established. The relevant associations and the Federal Commission against Racism, through its President, have concurred with the government's findings concerning the existing problems, but criticise the measures proposed to solve them, which they deem inadequate.
126. ECRI is concerned to note that, despite the consensus regarding the lack of sites, rather than increasing, their number has apparently even decreased in recent years. For lack of appropriate transit sites, Travellers have to stop in places not designated for this purpose, which generates tensions with local people. The fact that, because of the regulations, it is no longer really possible to stop on private sites, even with the owners' permission, or on public sites with the local authorities' approval makes the situation even more difficult. ECRI underlines that appropriate solutions should be found not only for Travellers of Swiss nationality but also for those from other countries passing through Switzerland.
127. In view of the slow progress in the wake of the Federal Council's report, the associations concerned and the Federal Commission against Racism have asked the federal authorities to introduce binding measures requiring the cantons to establish sites, in order to bring about a real change.
128. ECRI is concerned to learn from both associations and the authorities that members of the Traveller, Yenish and Sinti communities continue to be the subject of racist prejudice and stereotypes. It is therefore necessary to fight such prejudice, which results in discrimination in the field of housing and also in employment, an example being young people's difficulties in obtaining apprenticeships. The above-mentioned Foundation "Protecting the future of Swiss Travellers" participates in raising the awareness of the general public of this problem, as does the "Radgenossenschaft der Landstrasse", a government subsidised non-governmental organisation which defends the travelling communities' interests. This association is currently working on a project to

preserve and develop the Yenish language, which should in the long term help improve the preservation of the Yenish culture in Switzerland. The project is carried out in collaboration with the Federal Office for Culture. It includes filmed interviews in the Yenish language; it will be made available in DVD format, accompanied by written material.

129. ECRI strongly recommends that the Swiss authorities find solutions as soon as possible to provide the travelling communities with stopping places, by establishing a sufficient number of transit sites in appropriate, well-equipped locations.
130. ECRI also recommends that the authorities carry out an awareness-raising campaign targeting the general public in order to combat all phenomena of intolerance and rejection with regard to the Travellers, the Sinti and the Yenish and all kinds of racial discrimination to which they may lead.

Roma

131. There is still little information available about the Roma communities living in Switzerland. The vast majority are Swiss citizens; they have been living in Switzerland for a long time and are sedentary. Some Roma are itinerant or semi-itinerant citizens of neighbouring states.³⁹ Lastly, a number originate from Eastern Europe, the majority of whom probably come from the Balkans. It must be underlined that many of them identify themselves not as Roma but by their nationality. ECRI notes with concern that there have been cases of anti-Gypsyism in Switzerland in recent years, especially through remarks made by local or national politicians, which have been repeated in the media⁴⁰.

132. ECRI recommends that the Swiss authorities carry out research into the situation of Roma in Switzerland, and the problems of intolerance and rejection they encounter, and envisage, on this basis, an awareness-raising campaign targeting the general public with the aim of combating these phenomena and the racial discrimination to which they may lead.

Black people

133. In its third report ECRI recommended that the authorities put in place a strategy to counter hostility and discrimination against Black Africans in Switzerland.

134. ECRI is very concerned to learn that the situation described in its third report with regard to Black people has not improved and has even further deteriorated, in particular in two respects - the hostile atmosphere generated by political discourse and allegations of police misconduct.

135. ECRI has already pointed out that the racist, xenophobic discourse of certain politicians stigmatises Black persons in general, in particular by accusing them as a whole of being behind the drug trade in Switzerland. The poster depicting a black sheep as an illustration of the crime rate among foreigners is part of this stigmatisation of Black non-citizens in Switzerland. When publishing information on arrests the media generally indicate the nationality of the persons arrested, except in the case of Black people, who are described solely by their skin colour or their continent of origin (the media refer to "Africans" without greater precision).

136. The general opinion of human rights and anti-racism NGOs is that the number of cases of police violence or misconduct against Black persons, whatever their

³⁹ See above "Travellers and the Yenish community".

⁴⁰ See "Racism in public discourse - Racism in political discourse".

legal status, has been on the increase in recent years. Racial profiling by the police and by other authorities responsible for maintaining public order or controlling borders, including private security firms' staff present, inter alia, on public transport, specifically targets Black people. The latter complain in particular of the frequency of spot checks performed in the streets or on public transport and of the way in which these controls are carried out, which is sometimes humiliating especially where the person concerned is obliged to undress in the street.

137. The manner in which Black persons are described by certain politicians in their discourse and by certain police officers has a far-reaching influence on the way in which they are perceived by members of the Swiss majority population, particularly public officials, resulting in cases of racial discrimination in access to employment, housing, public services, publicly available goods and services and also education, on account of the prejudice and stereotypes which Black persons encounter. Black persons are apparently also victims of verbal racist harassment on a routine basis, particularly in the street, and also sometimes of racially motivated physical assaults. Since a number of Black persons are also non-citizens, above all originating from states outside the EU/EFTA, asylum seekers and, sometimes, undocumented immigrants, they are at risk of being subjected to multiple discrimination, that is to say discrimination on more than one ground, such as skin colour, nationality, legal status and so on.
138. Organisations representing Black people at local and national level and defending their interests draw the attention of the public and the authorities to the problems of racism and racial discrimination with which these people are faced but say they desperately lack the necessary financial resources and political support to this end.
139. ECRI is nonetheless pleased to note some encouraging progress. Black people are increasingly represented in politics, and in the 2007 elections a first Black MP gained a seat in the federal parliament. The media have apparently also made an effort to describe the situation of Black people in Switzerland in a more objective manner, and the efforts by certain police units in Switzerland to dispense intercultural training and combat racial profiling, referred to below, are being implemented in co-operation with organisations representing Black people. Lastly, a survey concerning Black people in Switzerland⁴¹ made it possible to bring to light their views, giving them a say on the issue of racism, and to identify solutions that have, however, yet to be implemented.
140. ECRI strongly recommends that the Swiss authorities take the necessary steps to monitor the situation with regard to racism and racial discrimination against Black people and to adopt tangible measures to counter these phenomena. It draws the authorities' attention to the recommendations made in other parts of this report concerning racism in political discourse and in the media and concerning police behaviour, which are of relevance to Black people, identified as a target group for racism in these fields.
141. ECRI urges the Swiss authorities to enhance their efforts to launch an awareness-raising campaign aimed at members of the majority population and public officials concerning the problems of racism and racial discrimination encountered by Black people and the need to counter these phenomena.

⁴¹ Carmel Fröhlicher-Stines, Kelechi Monika Mennel, "Les Noirs en Suisse, Une vie entre intégration et discrimination", study for the Federal Commission against Racism, Bern 2004.

Non-citizens

142. In its third report ECRI invited the Swiss authorities to refrain from reacting to signs of hostility within segments of the population by adopting increasingly restrictive rules and legislation with regard to foreigners. It recommended that the authorities reconsider the impact of the binary system of admissions on the treatment of different groups of non-citizens once in the country, particularly in fields such as family reunification. It recommended that the authorities take steps to ensure that the withdrawal of residence permits is strictly regulated and subject to judicial control. Lastly, it encouraged the authorities to take steps to improve the position of persons residing in the country without the requisite permits.
- *Legislation governing the residence and status of non-citizens and its application*
143. In 2008 non-citizens constituted 21% of the total population living in Switzerland. Some do not have Swiss nationality, although they were born there, sometimes even of parents themselves born in Switzerland.⁴² Since the publication of ECRI's third report, a major change has taken place with the passing of the Federal Law on Foreigners (LEtr) of 16 December 2005.⁴³ This law introduces a number of improvements, which ECRI welcomes, particularly by modernising the previous legislation, dating from 1931, and opening up the possibility for a person holding a short-term residence permit, with permission to exercise a gainful activity, to carry on that activity throughout Switzerland rather than solely in a given canton as was previously the case. Above all, for the first time this legislation introduces in Swiss law an "encouragement to the integration of foreigners", which is discussed below.
144. The new law preserves the binary system which has existed since 2002. In matters of non-citizens' entrance, residence and family reunification this system draws a distinction between nationals of member states of the EU (European Union) and EFTA (the European Free Trade Association), on one hand, and all other non-citizens, on the other hand. For the former the principle of free movement of persons applies, whereas the others, subject to exceptions, can obtain a residence permit only if they are managerial staff, specialists or other skilled workers.
145. Non-citizens who do not originate from EU/EFTA member states can obtain a short-term permit (less than one year), a temporary residence permit (more than one year) or a permanent residence permit (indefinite). Despite ECRI's repeated recommendations that permission to stay in Switzerland should not be linked to the question of dependence on social assistance, all these permits can be withdrawn if the holder or one of the holder's dependants becomes lastingly and to a large extent dependent on social assistance (except where the foreigner has been lawfully living in Switzerland for more than fifteen years). The new law aims to prevent bogus marriages with non-citizens but, according to human rights NGOs, it is too strict. The criticisms mostly concern its restrictive application by over-zealous public officials, which results in complications and undue delays in performing the marriage.
146. Despite its positive points, the new law represents a significant tightening of the rules applicable to non-citizens. This applies in particular to the duration of administrative detention with a view to deportation and to the extension of administrative detention for failure to comply with an order to leave the country. In some cantons minors can apparently be detained with a view to their deportation

⁴² See also above: "Discrimination in various fields - Naturalisation"

⁴³ With regard to the legislation on asylum seekers see below: "Asylum seekers and refugees".

and, in certain cases, the conditions in the administrative detention centres are inappropriate. ECRI notes that the Swiss authorities plan to establish a commission for the prevention of torture which would be competent to conduct investigations in the administrative detention centres.

147. In Switzerland the position of immigrants without legal status is a cause for concern. They include persons living in Switzerland whose asylum applications have been turned down. There is in principle a regularisation procedure, making it possible to obtain a residence permit in exceptional circumstances. However, although the practice varies from one canton to another, the regularisation policy is generally criticised by the NGOs as too stringent. Immigrants without legal status are in extremely precarious, vulnerable positions in Switzerland. According to a number of sources, access to social assistance and to health care is very difficult in certain cantons, which is nonetheless a breach of Swiss law whereby everyone is entitled to health insurance cover. Immigrants without legal status are in extremely precarious, vulnerable positions in Switzerland. According to a number of sources, access to social assistance and to health care is very difficult in practice in certain cantons. As under Swiss law everyone is entitled to health insurance cover, since 2002, the Federal Office of Public Health, as the relevant supervisory body, has been taking up with the insurers all cases of refusal to provide cover that it is apprised of.
148. In ECRI's view, this whole area of law and practice is particularly vulnerable to shifts in the general climate of opinion surrounding non-citizens who are not nationals of EU or EFTA states. This atmosphere partly explains the increased stringency of the law and practice regarding non-citizens' rights. In particular, some adverse tendencies can be noted, whereby the binary system leads people to draw distinctions between different categories of foreigners, for example those who can be said to be "welcome" in Switzerland, and those who are not, foreigners allegedly "likely to integrate" in Swiss society, those of European origin, and all other foreigners.⁴⁴ This trend leads to stigmatisation of non-European foreigners and increases the risks of discrimination and racist prejudice against them.
149. ECRI recommends that the Swiss authorities review the Law on Foreigners as a whole and the related practice in order to identify any problems with regard to foreigners' fundamental rights, not least the right to a private and family life, and take all the corrective measures necessary to avoid any infringement of these rights in applying the law.

- *Integration of non-citizens*

150. Article 53 of the Federal Law on Foreigners provides that the Confederation, the cantons and the municipalities shall take account of the objectives of integrating foreigners and "create conditions conducive to equality of opportunity and to foreigners' participation in public life." In particular, they must encourage language learning, employment promotion and preventive health care measures and support the efforts to foster mutual understanding between the Swiss and foreign populations and facilitate co-existence. ECRI is pleased to see that the law requires the Swiss authorities at all levels to promote integration and equal opportunities. Article 10 of the Order on Integration of Foreigners, issued on 24 October 2007 with a view to implementing this law, provides "1. The Confederation, the cantons and the municipalities shall inform foreigners about the legal system and the consequences of failure to comply with it, the standards and the basic rules to be observed in order to enjoy equality of opportunity in

⁴⁴ See also above "Racism in public discourse: - Racism in political discourse" and below "Integration of non-citizens".

terms of participation in social, economic and cultural life. 2. They shall inform the population about migration policy, the specific situation of foreigners and the objectives of the integration measures." ECRI hopes that the authorities will also inform the majority population of the obligation for everyone, not just foreigners, to observe the basic rules enabling enjoyment of equality of opportunity, in particular an essential rule, that of preventing and sanctioning any racist act or discrimination vis-à-vis non-citizens.

151. In practice, many measures to foster non-citizens' integration have been taken in recent years, a situation which ECRI welcomes. The existence of cantonal and municipal integration services and of cantonal integration officers is a cause for satisfaction. The Integration Promotion Office of the city of Zurich and the Lausanne Bureau for Integration of Immigrants can be cited as good practice examples, as they offer non-citizens a range of very useful services and treat integration as a two-way process between the majority and non-citizens. They lay emphasis on the need for action to promote equality of opportunity and to combat the racism and racial discrimination that foreigners may encounter, regarding it as essential to successful integration.
152. The Federal Office for Migration's report on integration measures of 30 June 2007 concluded that it was necessary to reinforce integration in the fields of language promotion, training and employment, which entailed allocating additional funding. The Federal Office for Migration allocates, in co-operation with the cantonal delegates for integration, CHF 14 000 000 for these integration measures. It was also necessary to co-ordinate and harmonise the measures taken by the authorities at all levels to ensure their effectiveness. On the basis of this report, the Federal Council adopted, on 22 August 2007, 45 integration measures, pursued by 14 federal agencies with the backing of cantonal bodies. According to an assessment published in early 2009, these measures are now being implemented by the agencies concerned. Some of them are referred to in other parts of this report.⁴⁵ These measures are implemented within the regular structures and have a value of approximately CHF 50 000 000 per year.
153. One of the measures consists in developing a system for monitoring xenophobia, racism, antisemitism, right-wing extremism and violence, along with a data bank.⁴⁶ This measure is apparently in the process of being implemented. However, according to the assessment report it has been delayed and the funding is not yet fully earmarked. ECRI nonetheless considers it essential to reinforce all integration measures involving the prevention of discrimination and racism.
154. On 20 January 2009, the "Tripartite Conference on Agglomerations", which brings together the Federal Council, the cantonal Governments and mayors of cities and municipalities, initiated a national debate on integration, stating "the objective of integration is to allow the Swiss and foreigners to live in peace, sharing the values of the Federal Constitution, in a spirit of mutual respect and tolerance with a view to guaranteeing equality of opportunity." The Confederation, the cantons and the municipalities, as well as representatives from business, trade unions, the academic world, NGOs and migrant organisations, are participating in the debate, which should make it possible to determine requirements and to assess the measures already taken in these fields.
155. Article 54 of the new law provides that the cantonal authorities may make granting a temporary residence permit or a short-term permit conditional on participation in a language class or an integration course under the terms of an

⁴⁵ See in particular "Discrimination in various fields: - Employment; - Housing; - Health care.

⁴⁶ See also below: "Monitoring of racism and racial discrimination".

"integration agreement" signed by the migrant and the authorities. Only foreigners originating from countries not members of the EU or EFTA can be required to sign such agreements. Newcomers are one target group for such measures, above all those arriving in a family reunification context. Migrants who have been living in Switzerland for a long time but are at risk of losing their residence permit on account of their behaviour or because of specific circumstances are another target group. Lastly, the agreements also apply to foreigners wishing to come to Switzerland to teach their country's language and culture or to play a role in religious leadership. Failure to comply with the condition laid down in a decision by the cantonal authority competent in migration matters requiring the person concerned to follow a "language class" or an "integration course" may lead that authority to refuse to extend a temporary residence permit.

156. A majority of the specialists working in the field of integration of non-citizens, whether for NGOs or the public services, have informed ECRI of their misgivings about establishing sanctions, such as the refusal to extend a residence permit, for failure to integrate. The main arguments advanced are that such arrangements are ineffective, and even counterproductive, and that integration is a complex phenomenon not solely dependent on the non-citizen's will. The Federal Commission for Foreigners (CFE), which has since become the Federal Commission for Migration Issues, expressed its scepticism in a detailed report on the integration agreements. It explained that it was "sceptical about the instrument's implementation and effectiveness. It fears that agreements could have a discriminatory, arbitrary effect. They must not be an obstacle to family reunification."⁴⁷
157. ECRI is pleased to note that the Swiss authorities do not currently consider these integration agreements as a systematic, generally applicable solution. Integration agreements are rather seen as separate measures drafted and implemented on an individual basis. Currently, several cantons are testing this new instrument in pilot projects which will be evaluated. In addition, in its recommendations concerning these agreements, the Federal Office for Migration calls for them to be envisaged on a case-by-case basis taking into consideration a migrant's circumstances and capabilities, as well as his or her prior knowledge. The objectives set must be realistic and achievable. In order to enhance the prospects of success, it is recommended that, as far as possible, migrants themselves should be involved in this process. However, ECRI notes that these are but recommendations and that it is for the cantonal authorities to decide whether to introduce these agreements; they also have the discretionary power to apply the sanction. Safeguards should be established in order to prevent any discrimination or arbitrary treatment with regard to the imposition of sanctions which can have serious consequences for the persons concerned, notably with regard to their private and family life.
158. ECRI reiterates that integration is a two-way process involving both majority and minority communities. It points out that requirements in this field must extend to society as a whole and not be focused solely on immigrants, in order not to stigmatise the latter and to avoid giving the impression that successful integration depends on their efforts alone. It is furthermore important that the authorities continue to focus on combating racism. The problem of stigmatisation, generalisations, stereotyping and prejudice by the majority population with regard to immigrants must also be settled if the integration process is to be a complete success.⁴⁸ ECRI considers, inter alia, that, in order to lay more emphasis on the

⁴⁷ CFE press release: "Conventions d'intégration : la CFE est sceptique" (CFE sceptical about integration agreements), Bern, 11.09.2007.

⁴⁸ See above: "Racism in public discourse: - Racism in political discourse and – Racism in the media".

majority population's responsibilities, the authorities should ensure that measures to combat discrimination are always expressly presented to the public as being part and parcel of the integration policy.⁴⁹

159. ECRI regards language as a key to integration. It is therefore important to offer immigrants language lessons at a reasonable cost and under conditions enabling them to attend, for example with regard to the timing of lessons and the provision of childcare facilities. ECRI is pleased to note that lessons in the local language are on offer in many cantons and municipalities, although they are far from satisfying the real demand, as was pointed out in the above-mentioned report by the Federal Office for Migration. In this connection, ECRI underlines that special attention should be paid to the issue of the Swiss German dialects spoken in some regions, as these dialects vary between regions and are very different from standard German. These dialects constitute an added difficulty for non-German speaking adults who are learning standard German. Persons originating from the German-speaking parts of Switzerland use standard German solely in writing and the spoken form of the language is the local dialect. In this connection, the authorities could raise awareness among the population and public officials of the efforts that should be made when speaking German to non-citizens who, even after acquiring a good knowledge of the language, may not master the local dialect, or at least not well enough. The German lessons offered to non-citizens could be designed with this specificity in mind.
160. Lastly, ECRI draws attention to the fact that full integration entails the possibility of participating in a country's political life, a particularly relevant issue in a country such as Switzerland where direct democracy plays an essential role. Since the population of Switzerland includes 21% of non-citizens, it can be deduced that one-fifth of the population is unable fully to participate in political life, as either elected representatives or voters. A growing number of cantons or municipalities provide that people who have resided there for a long time can participate in local elections, a fact which ECRI welcomes. It nonetheless considers that persons of immigrant origin who have been living in Switzerland for some time should be given a say in these matters either by facilitating their naturalisation⁵⁰ or by entitling them to vote in local level elections.⁵¹
161. ECRI recommends that the Swiss authorities pursue their efforts to promote an integration policy based on the concept of integration as a reciprocal process involving both the majority and minority communities. To this end, it recommends that they take steps to foster genuine mutual respect for diversity and knowledge of the different cultures and traditions and to end stereotyping and prejudice about cultures and values. To the same end, it recommends that they situate their action to combat racial discrimination in the context of integration policy and systematically present these initiatives to the public in this way.
162. ECRI recommends that the Swiss authorities assess the integration measures taken in order to determine which additional measures should be adopted to promote integration and counter racism and racial discrimination. During this assessment special attention should be paid to the integration agreements to verify that the applicable sanctions do not have a counter-productive effect on the integration of the persons concerned or on the climate of public opinion and debate concerning the target groups. Should the assessment result in a finding

⁴⁹ The issue of racial discrimination is addressed in other parts of this report. See above: "Legislation prohibiting racial discrimination" and "Discrimination in various fields".

⁵⁰ See above "Discrimination in various fields: - Naturalisation".

⁵¹ See also the recommendation concerning ratification of the Convention on the Participation of Foreigners in Public Life at Local Level under "International legal instruments".

that the integration agreements are ineffective and counter-productive, all the necessary adjustments should immediately be made to rectify the situation.

163. ECRI recommends that the Swiss authorities lay particular emphasis on means of encouraging learning of the local language by non-citizens with insufficient command thereof by adopting the necessary additional incentive measures and by enhancing opportunities to learn this language, which necessarily entails financial and other efforts on the part of the authorities. The authorities should also take steps to instil in the community as a whole, and in particular in public officials and employers, the idea that they must themselves make an effort to assist the non-citizens concerned to learn the language, particularly in regions where a dialect is spoken.

Asylum seekers and refugees

164. In its third report ECRI made a series of recommendations concerning asylum seekers and refugees, in particular that the generally negative climate of opinion with regard to them should be countered, that asylum seekers' rights should not be undermined and that as little recourse as possible should be had to detention of asylum seekers and other persons awaiting deportation.
165. ECRI very much regrets to note that most of its recommendations concerning asylum seekers have not been followed and that their situation has worsened in terms of the climate of opinion regarding them and also on account of a tightening of the legislation. These two phenomena are moreover closely linked. The Law on Asylum was amended in 2005, and the new provisions came into force in 2008. The declared aim of this revision was to restrict access to asylum by making Switzerland less attractive for non-citizens seeking asylum without a valid ground, to improve efficiency and to prevent alleged abuses and to make savings by modifying the procedure while upholding the right to request asylum in Switzerland. ECRI understands from the authorities that they are envisaging yet further restrictions on access to the asylum application procedure in the future.
166. The NGOs working in this field generally consider that asylum seekers remain in a very difficult position. In this area the problems vary significantly from one canton to another, and in this report it is possible to draw the authorities' attention to only some of the matters of which ECRI has been informed. According to some sources, asylum seekers spend only a few days in one reception centre and then have to live in another. Their possibilities of leaving these reception centres, which are nonetheless not detention centres, are very restricted in time and distance, to the point where some NGOs use the expression "de facto detention centre" to highlight the problem. Access to legal aid remains very difficult, and the time-limits for filing an application or lodging an appeal are considered too short, above all in view of the authorities' strict requirements concerning the supporting documents to be provided, particularly at the stage of the decision whether to submit the application to substantive examination.⁵²
167. ECRI notes that, following a decision by the Federal Tribunal of 18 March 2005, emergency assistance cannot be withdrawn from asylum seekers concerning whom a decision is taken not to submit their application to substantive examination. However, the NGOs and the Office of the United Nations High Commissioner for Refugees (UNHCR) have noted practical difficulties in granting this assistance in some cantons.
168. The image of asylum seekers has deteriorated in political discourse, the media and public opinion, to the point where it is no longer rare for members of the

⁵² For other measures concerning non-citizens, which also affect asylum seekers or certain of them, see above: "Vulnerable/Target groups: Non-citizens".

majority population to equate asylum seekers with fraud and drug dealing. As an example of the increasingly radical trend of public opinion regarding asylum seekers, mention can be made of a motion passed by the municipal council of Vallorbe in late 2007, the aim of which was to ban asylum seekers living in the town's reception centre from the railway station. This motion was deemed unlawful, in particular on the ground that it was discriminatory since it concerned all asylum seekers. It accordingly came to nothing but it reflects the climate of opinion, especially in municipalities where reception centres for asylum seekers are located. ECRI notes with interest that in 2008 a project was initiated, supported by the Federal Service for Combating Racism and aimed at raising local people's awareness of the asylum seekers' situation in order to combat racist prejudice. Initiatives of this kind are necessary and should be extended to the whole of Switzerland.

169. ECRI recommends that the Swiss authorities closely monitor the implementation of the new legislation on asylum and, in consultation with the competent non-governmental bodies, including the UNHCR and NGOs defending asylum seekers' interests, take all the necessary measures to ensure that the rights of asylum seekers and refugees are fully guaranteed in practice.

170. ECRI recommends that the authorities launch a national awareness-raising campaign throughout the country aimed at combating racist prejudice and stereotypes with regard to asylum seekers and refugees. ECRI also recommends pursuing and reinforcing the training and awareness-raising efforts concerning respect for cultural diversity aimed at staff in contact with asylum seekers.

VI. Antisemitism

171. ECRI notes the continued existence in Switzerland of expressions and acts of intolerance in respect of persons belonging to the Jewish community.⁵³ The expressions of antisemitism noted in recent years include revisionist arguments, anonymous flyers, letters to newspaper editors and, above all, on-line reactions to press articles published on the Internet. They are frequently voiced in connection with debates on the Middle East. Cases of vandalism against synagogues and graves or private property owned by Jews are also to be deplored. In some instances verbal and sometimes even physical attacks on individuals belonging to the Jewish religion have taken place in the street.

172. The Swiss authorities are aware of the problem of antisemitism and have taken measures, inter alia, to raise awareness of the duty of remembrance of the Holocaust both in schools and in public opinion in general. The anti-racism measures mentioned in other parts of this report generally include those aimed at combating antisemitism.

173. ECRI recommends that the Swiss authorities pursue and reinforce their efforts to combat antisemitism. It encourages the Swiss authorities to seek and identify the causes of antisemitism in order to improve their action to prevent and counter this phenomenon. In this connection, ECRI draws the authorities' attention to its General Policy Recommendation No. 9 on the fight against antisemitism.

VII. Police conduct

174. In its third report ECRI recommended that the Swiss authorities take a series of measures relating to the issue of racism and racial discrimination in policing, including the introduction of a system of independent investigation into allegations of police mistreatment, whether at federal or cantonal level, the reinforcement of initial and in-service training for members of the police with

⁵³ See in particular "Racism in public discourse".

regard to racism issues, the recruitment of members of minority groups into the police and the creation of dialogue structures between the police and minority groups.

175. Matters relating to the police are mainly a competence of the cantons, with the result that there are as many police forces as there are cantons in Switzerland (twenty-six), along with a federal police force and municipal police forces. Police powers and training vary between the cantons. The same applies to the bodies competent for investigating police misconduct. However, in the event of misconduct constituting a criminal offence the criminal law procedure is applicable throughout Switzerland, and in most cantons a disciplinary procedure exists. ECRI notes with interest that certain cantons and certain cities have ombudsmen competent for dealing with complaints against the police, or policing supervisory boards which can make recommendations to the police. However, there is no body at federal level that could receive individual complaints and issue recommendations.
176. From the outset ECRI expresses its satisfaction to learn that a number of the measures it recommended concerning police activities have been taken, which is an encouraging sign. However, before describing these positive developments, ECRI wishes to voice its profound concern about allegations from various, serious sources that there are still cases of police misconduct with regard to non-citizens, asylum seekers, Black persons and other minority groups.⁵⁴ The unanimous opinion is that it is above all young Black males or persons with a foreign appearance who are at risk of suffering ill-treatment of this kind.
177. The allegations of police misconduct concern the use of excessive force, particularly during police operations in centres for asylum seekers or during the deportation of non-citizens, verbal excesses of a racist or discriminatory nature and a tactless, aggressive attitude. It is apparently also sometimes the case that, where a person wishes to make a complaint against the police, a counter-complaint is immediately lodged against them with the sole aim of deterring them from taking the matter further. The NGOs point out that, when cases are referred to the competent authorities, whether disciplinary bodies or the public prosecution service, the results of the investigations tend to be discouraging. At the same time, due to a lack of confidence in the police and in the supervisory structures, sometimes based on unfortunate past experience, victims - and even witnesses - in some cases refrain from reporting acts of police misconduct or offences perpetrated by civilians in order to avoid entering into contact with the police. In addition, the police delegate a growing number of tasks to private security firms, particularly on public transport, and, here too, ECRI has received allegations of racist or discriminatory misbehaviour.
178. One problem often raised by human rights NGOs is racial profiling. This consists in the use by the police, with no objective or reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities. The Swiss police forces have been known to acknowledge that, in operations to combat drug trafficking, they carry out identity checks targeted in particular at Black persons present in known drug trading neighbourhoods where it has been shown that drug trafficking has been controlled by persons of a specific origin. The explanation most frequently advanced is that drug networks are primarily run by Black persons, in particular asylum seekers. This information is difficult to confirm, and, in the opinion of civil society organisations, has its main basis in prejudices and stereotypes common in Switzerland, not least among the police. This also is difficult to confirm.

⁵⁴ See in particular the recent report by Amnesty International, "Police, justice, et droits humains, pratiques policières et droits humains en Suisse" (Switzerland: police, justice and human rights), Bern 2007.

179. The majority of police officers perceive no racist intent in this way of proceeding. They consider that it is an effective means of fighting crime. Conversely, persons belonging to the target groups regard it as discriminatory and humiliating not only because of the frequency of controls on the street, which some allege are performed on a virtually daily basis, but also because the conduct of certain police officers during controls leaves something to be desired.
180. In its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, ECRI points out that use of a criterion such as skin colour in deciding to control an individual on the street must have an objective and reasonable justification if it is not to constitute racial discrimination. It underlines the danger of allowing racial profiling to develop into a vicious circle; thus, controls performed on the streets in everyone's sight and solely targeting persons belonging to certain ethnic groups, without real justification, inevitably feed stereotypes and racist prejudices among the public, the media and political leaders. They tend to conclude that the persons being controlled are necessarily wrongdoers and that it is therefore Black people and persons with a foreign appearance who perpetrate offences.
181. Many studies on racial profiling based on the experience of a number of European countries⁵⁵, show not only that this practice breaches the principle of non-discrimination, but also that it is ineffective in fighting crime. It is even counter-productive since it generates distrust of the police within the group targeted. ECRI very much hopes that the studies and experience of other countries, performed and published by police forces themselves or at their request, will receive full attention in Switzerland and will serve as guidance for finding solutions to the problem of structural discrimination which racial profiling constitutes.
182. ECRI is pleased to learn that the Swiss authorities have taken a number of measures to prevent cases of police misconduct, particularly of a racist nature. According to new regulations, to obtain the federal attestation of competence as a policeman or -woman, candidates have to pass examinations in Ethics and Human Rights. Furthermore, mention can be made, for example, of the Ombudsman of the city of Zurich, who can receive complaints from individuals concerning police behaviour, mediate in such matters and issue recommendations to the units concerned. In recent years the Ombudsman has had occasion to deal with cases of unsuitable behaviour by the police towards visible minorities, with fairly satisfactory results. The Ombudsman also plays an active role in police training concerning intercultural skills and the need to combat racism and racial discrimination.
183. In other parts of Switzerland significant training and awareness-raising efforts have been made. A growing number of cantonal and municipal police forces undergo initial and in-service training in intercultural skills, including, as in the city of Zurich, training in basic human rights, notably in partnership with NGOs specialised in this field. Some training modules are developed in co-operation with the Federal Commission against Racism. The Federal Service for Combating Racism supports projects of this kind. Inter-cantonal police academies have been set up, and Switzerland is increasingly moving towards a system of regionalisation of police training, which should enable the pooling of good practice in training matters. ECRI nonetheless notes that this progress concerns only a limited number of cantons and that it is therefore necessary to ensure that this type of training is extended to all cantons.

⁵⁵ See for instance: Open Justice Initiative, Justice Initiatives, Ethnic Profiling by Police in Europe, June 2005, 100 p., www.justiceinitiative.org/.

184. In addition to the progress noted with regard to training, ECRI is pleased to learn that some police forces, at either cantonal or municipal level, have launched strategies to enhance ethical behaviour among their staff through the adoption of charters or codes of conduct and the creation of bodies responsible for supervising compliance with them, as is the case with the Lausanne municipal police force. Some police forces have introduced solutions for developing a dialogue with minority groups. A number have made an effort to recruit Swiss nationals of foreign origin and have found that they have gained much from this approach, including in effectiveness. It also seems that, in some places, such as the city of Basel, recruitment of police officers has been opened up to non-citizens, which will also allow enhanced diversity within the police.

185. ECRI recommends that the Swiss authorities ensure that all members of the police, whether already in active service or in initial training, follow training and awareness-raising courses regarding the need to combat racism and racial discrimination in policing, including racial profiling. It recommends that structures be set up to enable the exchange of good practice in this field between the various police forces at the federal, cantonal and municipal levels. With regard to these issues and all other issues of relevance to the police, ECRI draws attention to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which gives guidelines concerning the measures to be taken in this field.

186. ECRI recommends that the Swiss authorities establish a body, or several bodies, independent of the police and the public prosecution service, which would be responsible for investigating all presumed cases of racial discrimination and racist misconduct by the police. It should be ensured that a body of this kind exists for all the cantons. ECRI also urges the authorities to ensure that, where applicable, the perpetrators of these acts are sanctioned in a public and appropriate manner.

187. ECRI urges the Swiss authorities to take steps to prevent racial profiling by the police as defined above, in particular by clearly defining and prohibiting such racial profiling in the law, launching research into racial profiling and monitoring police activities in order to identify racial profiling practices.⁵⁶

VIII. Monitoring racism and racial discrimination

188. ECRI welcomes the efforts made by the Federal Commission against Racism and other organisations to collect data concerning racism and racial discrimination in Switzerland. However, it seems necessary to continue setting up data collection systems in this field. These systems should allow improved identification of trends and causes with regard to racist acts and also the detection of cases of direct or indirect racial discrimination, permitting appropriate solutions to be found to the problems thus identified. A number of initiatives are being pursued, in particular under the supervision of the Federal Service for Combating Racism, and are moving in this direction, notably in connection with the above-mentioned integration measures.⁵⁷ Data collection relating to the criminal law provisions against racism, as referred to above, is part of this effort.⁵⁸

189. ECRI strongly encourages the Swiss authorities to reinforce their efforts to put in place a full, consistent data collection system making it possible to assess the situation with regard to the various minority groups in Switzerland and to

⁵⁶ See paragraphs 1 to 4 of General Policy Recommendation No. 11 on combating racism and racial discrimination in policing and paragraphs 27 to 47 of the explanatory memorandum to this recommendation, which give guidelines in this field.

⁵⁷ See above: "Vulnerable/Target groups: - Non-citizens".

⁵⁸ See above: "Article 261bis of the Criminal Code: the criminal provision against racism".

determine the extent of manifestations of racism and direct or indirect racial discrimination. In this connection, it recommends that for the purpose of identifying manifestations of discrimination they envisage collecting data broken down by categories such as ethnic or national origin, religion, language or nationality, while ensuring that, in all cases, this collection is performed in accordance with the principles of confidentiality, informed consent and individuals' voluntary self-identification as members of a specific group. This system should be devised in close co-operation with all the players concerned, including civil society organisations. It should also take into consideration the possible existence of instances of double or multiple discrimination.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Switzerland are the following:

- ECRI recommends that the Swiss authorities pursue their efforts to train police officers, prosecutors, judges and future legal professionals in the scope and application of Article 261bis of the Criminal Code, which is intended to prohibit racist acts. In particular, provision should be made for training courses allowing the different members of the judicial system to exchange information and expertise in order to speedily bring about an improvement in the application of Article 261bis by all those concerned.
- ECRI recommends that the Swiss authorities assess the integration measures taken in order to determine which additional measures should be adopted to promote integration and counter racism and racial discrimination. During this assessment special attention should be paid to the integration agreements to verify that the applicable sanctions do not have a counter-productive effect on the integration of the persons concerned or on the climate of public opinion and debate concerning the target groups. Should the assessment result in a finding that the integration agreements are ineffective and counter-productive, all the necessary adjustments should immediately be made to rectify the situation.
- ECRI recommends that the Swiss authorities ensure that all members of the police, whether already in active service or in initial training, follow training and awareness-raising courses regarding the need to combat racism and racial discrimination in policing, including racial profiling. It recommends that structures be set up to enable the exchange of good practice in this field between the various police forces at the federal, cantonal and municipal levels. With regard to these issues and all other issues of relevance to the police, ECRI draws attention to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which gives guidelines concerning the measures to be taken in this field.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

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