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

CRI(2016)24

ECRI CONCLUSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS IN RESPECT OF THE NETHERLANDS SUBJECT TO INTERIM FOLLOW-UP

Adopted on 17 March 2016[1]

Published 7 June 2016

[1] Unless otherwise indicated, any developments which occurred after 4 November 2015, date on which the response of the authorities of the Netherlands to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, are not taken into account in this analysis.

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FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007[1], not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

[1] CM/Del/Dec(2007)986/4.1.

1. In its report on the Netherlands (fourth monitoring cycle) published on 15 October 2013, ECRI recommended that the authorities introduce a provision to the effect that racist[1] motivation constitutes a specific aggravating circumstance in sentencing.

The authorities have informed ECRI that they are not in favour of introducing a provision in the criminal law to the effect that a racist motive constitutes a specific aggravating circumstance in sentencing. They recall that there are non-binding guidelines for prosecutors to request higher sentences in cases where racial motivation could be proven. ECRI examined this system on the occasion of its 2013 report; it found it lacking since, contrary to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, it creates no obligation for the national judge to increase the sentence in cases where it has been established that the culprit acted with racist motivation.

ECRI considers that this recommendation has not been implemented.

2. In its report on the Netherlands (fourth monitoring cycle), ECRI recommended that the authorities develop a national strategy and policy against racism and racial discrimination which tackles at the national level certain issues and, more generally, sets out objectives, mechanisms for implementation, monitoring and evaluation.

ECRI has been informed that the National Action Programme on Discrimination, which was adopted in 2010 and covers all grounds of discrimination, including but not limited to racial discrimination, has been fully implemented by the Dutch authorities. The programme comprised activities to combat racial discrimination in the labour market, improve the relations between police and various vulnerable groups of concern to ECRI, and monitoring Islamophobia. The authorities are currently in the process of preparing a new action programme on discrimination which will be presented to Parliament for adoption. The new programme will have a stronger focus on discrimination based on religion, descent and colour, in order to combat Islamophobia, antisemitism and discrimination against people of African descent.

While ECRI acknowledges the above-mentioned efforts made by the Dutch authorities to combat racism and racial discrimination, it notes that these were part of a general anti-discrimination programme and that no national strategy exists specifically to address racism and racial discrimination. ECRI also notes that no such thematic strategy is currently planned. To ECRI's knowledge, no evaluation has been carried out to assess if a general anti-discrimination programme is more effective in preventing and combating racial discrimination than a strategy dealing exclusively with this problem. Also, while some monitoring and evaluation measures have been developed for activities to combat racial discrimination in the labour market, such measures are largely absent in other fields.

Furthermore, the government still leaves a large share of the responsibility to prevent and combat racism and racial discrimination to local authorities. While local authorities often have a better understanding of the context-specific problems in their municipalities, they also quite often lack the necessary expertise. Moreover, there are issues that can only be dealt with at national level. The situation is therefore characterised by the absence of an effective structural approach to combat racism and racial discrimination at national level.

ECRI considers, therefore, that this recommendation has been partially implemented.

[1] According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

3. In its report on the Netherlands (fourth monitoring cycle), ECRI recommended that the authorities address any exploitation of temporary agent workers who are not permanently resident in the Netherlands by: setting up, if need be, a system of licenses for temporary employment agencies; regularly inspecting the same; and ensuring that the above-mentioned category of workers benefit from the safeguards and work conditions provided for under the law.

ECRI notes that the Dutch authorities have taken several steps to address the problem of exploitation of temporary foreign workers. On 1 June 2015, the Sham Employment Arrangement Act entered into force, which aims at preventing underpayment of workers, including temporary foreign workers. Under this law, a number of previously existing employment schemes that were deemed as potentially exploitative are now banned. Furthermore, additional enforcement powers were granted to the Social Affairs and Employment Inspectorate, which carries out inspections of temporary employment agencies, which are now also obliged to register with the local Chamber of Commerce. The latter measure is aimed at providing a complete overview of all operating agencies in order to facilitate inspection activities. The authorities also launched a voluntary quality-mark scheme through which temporary employment agencies can become certified. In some cases, agencies lost their quality marks following inspections, which helped the authorities to focus their monitoring activities.

Since 2014, the Ministry of Social Affairs and Employment has also intensified the co-operation between the Social Affairs and Employment Inspectorate on the one hand, and the police and public prosecutors on the other.

The authorities' approach aims, on the one hand, at facilitating self-regulation of temporary employment agencies, and, on the other, at carrying out strict inspections and imposing fines, if exploitative practices are discovered.

There is no provision in place, however, for the authorities to withdraw the business licenses from temporary employment agencies when labour exploitation has been discovered. Furthermore, the authorities have informed ECRI that, in their view, a system of licenses for temporary employment agencies, as suggested by ECRI, would not enhance the effectiveness of the enforcement system.

While it is too early to comment on the exact impact that the various measures taken by the authorities have had so far, in particular in relation to the effectiveness of controls, ECRI is doubtful that the system would be truly effective without the Dutch authorities introducing legal provisions allowing for the removal of business licenses in cases of exploitative practices.

ECRI considers that this recommendation has been partially implemented.