

**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF THE UNITED KINGDOM SUBJECT TO INTERIM FOLLOW-UP**

Adopted on 4 December 2012¹

¹ Any developments which occurred after 18 April 2012, date on which the response of the United Kingdom authorities 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.

ECRI Secretariat
Directorate General II - Democracy
Council of Europe
F-67075 STRASBOURG Cedex
Tel.: + 33 (0) 388 41 29 64
Fax: + 33 (0) 388 41 39 87
E-mail: ecri@coe.int

www.coe.int/ecri

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 2007¹, 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 United Kingdom (fourth monitoring cycle) published on 2 March 2010, ECRI reiterated its recommendation that the authorities consider how to best ensure that legal aid is available in discrimination cases before Employment Tribunals.*

As concerns England and Wales, ECRI notes that the recently passed Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, once it enters into force, will introduce major changes to the legal-aid scheme there. Of course, it will still be possible to obtain free legal advice and assistance for “discrimination-in-employment claims” (this covers the stage before the claim is brought to the Employment Tribunal). However, civil society and practitioners have pointed out that, in practice, it is quite often difficult to identify the discriminatory aspects of an employment claim from the outset; and the LASPO Act 2012 will remove the possibility of obtaining free legal advice and assistance in respect of “pure employment” claims that exists today. As a result, fears have been expressed that a lot of discrimination-in-employment claims will never be identified.

According to ECRI’s information, this change is likely to have significant impact on persons belong to “ethnic minorities”¹, who currently represent about one quarter of the beneficiaries of the legal-aid scheme in employment cases (the percentage of the economically active population they represent is much lower). This has been considered by the Government. However, they were satisfied that any disadvantage to particular groups was outweighed by the aims of the LASPO Act 2012: (i) to reduce spending on legal aid (as part of the Government’s commitment to reduce the deficit), (ii) to focus legal-aid resources on the most needy and (iii) to provide the most appropriate form of help taking into account (a) the importance of the issues at stake, (b) litigants’ ability to present their cases and (c) the availability of alternative sources of funding and of alternative routes to resolution (including other possibilities for help and advice).

In ECRI’s view, it is necessary to monitor how the above-mentioned change will affect access to the Employment Tribunal in practice. Arguably, awareness-raising activities focusing specifically on the rights of victims of discrimination could offset some of the effects of the LASPO Act 2012.

However, ECRI also notes that the LASPO Act 2012 does not provide for free legal aid for representation in respect of “discrimination-in-employment claims” before the Employment Tribunal (this being the next stage in the procedure). It only provides for free legal aid for representation in respect of “discrimination-in-employment claims” before the Employment Appeals Tribunal. As a result, ECRI cannot but conclude that its interim recommendation has only been partially implemented in England and Wales.

In ECRI’s view, the same conclusion should be reached in respect of Northern Ireland², where legal aid is not available for representation before employment tribunals³, although legal aid is available for initial advice and assistance. ECRI notes that in 2009 the Northern Ireland Assembly considered whether legal aid should be available for tribunal hearings; it decided not to extend legal aid, preferring to give priority to alternative dispute-resolution mechanisms and improved information and advice;

¹ The way that the concept is understood in the United Kingdom does not cover all of ECRI’s “vulnerable groups”. However, migrants and non-nationals are included.

² As regards Scotland, ECRI notes that assistance by way of representation has always been available for discrimination cases before the Employment Tribunal – being subject to the Scottish Legal Aid Board’s prior approval following an examination on the merits. Legal aid is also available before the Employment Appeals Tribunal.

³ However, public funding may be obtained by the Equality Commission for Northern Ireland where the proceedings arise from discrimination on the grounds of sex, disability, race, religious belief, political opinion, sexual orientation and/or age.

moreover, in 2011 an independent review of access to justice in Northern Ireland - commissioned by the Department of Justice for Northern Ireland – also came out against making full legal aid available to users of employment tribunals.

2. *In its report on the United Kingdom (fourth monitoring cycle), ECRI strongly encouraged the United Kingdom authorities in their efforts to address the disadvantages faced by Gypsies and Travellers in access to adequate accommodation. It strongly recommended that the authorities take all necessary measures to ensure that the assessment of accommodation needs at local level is completed thoroughly and as quickly as possible.*

In respect of England, ECRI notes that the Gypsy and Traveller Accommodation Assessments required under the Housing Act 2004 and Circular 01/06⁴ have been completed by all local authorities. The second part of the recommendation has, therefore, been implemented (in so far as England is concerned).

As regards the first part of the recommendation, ECRI notes that in March 2012 the Government published a new planning policy for traveller sites, which replaces Circular 01/06. This followed the abolition of regional strategies⁵. Decision-making has been decentralised to local authorities⁶, whose policies will, however, be tested by an independent inspector.

The Government believes in local authorities' empowerment in this field. The ministerial working group on tackling inequalities experienced by Gypsies and Travellers issued a progress report in April 2012. The part that deals with accommodation announces (i) communication measures to change the way in which traveller sites are perceived by the majority population, (ii) funding for training elected councilors on how to overcome local opposition to traveller-site proposals and (iii) measures to encourage healthy living conditions on traveller sites⁷; most importantly, it announces (iv) two financial incentives: the New Homes Bonus Scheme, which started in April 2011 and will last six years, and £ 60 000 000⁸ to help local authorities and other providers with the cost of new traveller pitches until 2015⁹.

Gypsy and Traveller organisations believe that the new planning policy could lead to a reduction of needs estimates and make accommodation provision more difficult. ECRI shares some of these concerns, especially since it recognises (on the basis of its experience) the risk that local decision-makers might encounter greater difficulty in overcoming objections to the development of traveller accommodation than decisions-makers at a higher level of government. In the light of the above, ECRI considers that the first part of the recommendation has only been partially implemented in England.

As regards Scotland, ECRI has been informed that the recently introduced reforms to the way in which local authorities plan for new housing provision have strengthened the requirements in relation to accommodation for Gypsies and Travellers. Currently, most local authorities are in the process of completing their housing need and demand

⁴ This provided for a three-stage process: local authorities assessed accommodation needs; regional planning bodies defined targets; and local planning authorities determined how the targets would be met.

⁵ Formally, by Article 109 of the Localism Act 2011.

⁶ The Localism Act 2011 provides, nevertheless, for a duty to cooperate.

⁷ In April 2011 measures were taken to apply the Mobile Homes Act 1983 to traveller sites owned by local authorities.

⁸ According to some sources, this corresponds to the previous Government's commitment, minus £ 30 000 000.

⁹ On 7.1.12 £ 47 000 000 were allocated for 750 pitches. Criticism on the use of this funding has been expressed in a study entitled Gypsy and Traveller Site Funding under the Coalition, published in March 2012 by the Irish Traveller Movement in Britain.

assessments. Moreover, they are in the early stages of preparing their new local housing strategies.

As regards Wales, ECRI takes note of (i) the Welsh Government's commitment, contained in "Travelling to a Better Future, A Gypsy and Traveller Framework of Action and Delivery Plan" (launched in September 2011), to increase and improve accommodation for Gypsies and Travellers, (ii) the grant programme that the Welsh Government has made available to local authorities in respect of traveller sites (which provides 100% of the necessary funding and presupposes an accommodation needs assessment) and (iii) the Good Practice Guides for the Design and Management of Gypsy and Traveller sites, which the Welsh Government has developed.

As regards Northern Ireland, ECRI has been informed that the third Comprehensive Traveller Needs Assessment is scheduled to be completed in 2013. The Northern Ireland Housing Executive reviews its Traveller programme every year, organises traveller cultural-awareness training for the competent staff and other stakeholders and has completed a comprehensive land-review in areas of identified traveller accommodation need.

In the light of the above information, ECRI considers that the recommendation has been partially implemented in Scotland, Wales and Northern Ireland.

3. In its report on the United Kingdom (fourth monitoring cycle), ECRI encouraged the United Kingdom authorities to continue their efforts to address the under-representation of ethnic minorities in the police, and to monitor progress in recruitment, retention and career advancement.

In England and Wales, ECRI notes a small rise in the proportion of ethnic minority police officers¹⁰: from 4.6% in March 2010 to 4.8% in March 2011. However, it also notes their under-representation at senior ranks. As at 31 March 2011 they represented 3.3% of officers having the rank of Chief Inspector and above as opposed to 5.2% of constables¹¹. As regards recruitment, ECRI notes that in the year to 31 March 2011 ethnic minority members represented 7.5% of all officers joining the police. As for the retention rate, this was better for ethnic minority officers (3.1% of whom left the force) than for others (4.8%). Finally, as at 31 March 2011, ethnic minority members also represented 11.3% of special constables¹² and 7.4% of police civilian staff¹³.

In the light of the above statistics, ECRI considers that its recommendation has been partially implemented in England and Wales.

The same conclusion can be reached in respect of Scotland and Northern Ireland, where various initiatives have been taken to increase diversity in their police forces. For example, the Scottish Government and the Association of Chief Police Officers in Scotland support a number of organisations, including SEMPERscotland¹⁴, the Gay Police Association and the Scottish Police Muslim Association; as for the Police Service of Northern Ireland, it has tried to recruit persons with particular linguistic skills¹⁵, has encouraged the setting up of an Ethnic Minority Police Association and encourages the development of its ethnic minority officers' competencies.

¹⁰ Described as "black and minority ethnic" in the relevant statistics.

¹¹ The police ranks are constable, sergeant, inspector, chief inspector, superintendent, chief superintendent and ACPOs.

¹² Unpaid police officers.

¹³ 10.7% of police community support officers, who wear uniforms and perform patrol duties.

¹⁴ A Scottish-wide organisation representing minority ethnic officers and staff in the police services.

¹⁵ Usually from countries where English is not the first or not even the official language.

