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SECOND REPORT ON SWITZERLAND

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Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Switzerland is dated 13 June 1997 (published in March 1998). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to Switzerland took place on 3-5 May 1999. During this visit, the rapporteurs met with representatives of the various departments (ministries) and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Swiss national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation and the Swiss national liaison officer, whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

ECRI would also like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 18 June 1999 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.

Executive Summary

Switzerland has taken some important steps in recent years to set up a framework for combating the problems of racism, xenophobia, antisemitism and intolerance, including the introduction of a criminal law provision implementing Switzerland's ratification of the Convention for the Elimination of All Forms of Racial Discrimination, and the setting-up of a Federal Commission against Racism with various responsibilities in this area. Several initiatives have also been taken on cantonal level to address such issues.

However, although violent expressions of racism and intolerance remain sporadic, feelings of xenophobia and intolerance remain present in Switzerland. A lack of recognition of today's Switzerland as a society in which the concept of multiculturalism needs to embrace more than the traditional linguistic plurality of the country, may compound some feelings of unease in the population around issues such as the presence of asylum-seekers or the position of the large non-citizen population (almost 20% of the population), many of whom have lived in Switzerland for very many years. Such feelings are in some cases reflected by strict policies and regulations concerning the rights of non-citizens.

In the following report, ECRI recommends to the Swiss authorities that further action be taken to combat racism, xenophobia, antisemitism and intolerance in a number of areas. These recommendations cover, inter alia, the need to ensure that the legislative framework in place to combat racism and discrimination is adequate and fully-implemented; the need to address certain concerns as regards the situation of non-citizens and their possibilities for becoming fully-participating members of Swiss society; and the need for measures to improve the general climate of opinion towards those who are different from the majority population.

SECTION I: OVERVIEW OF THE SITUATION

A. International legal instruments

1. Switzerland has signed and ratified a large number of international legal instruments relevant in the field of combating racism and intolerance. ECRI welcomes in particular its recent ratification of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. ECRI encourages the Swiss authorities to sign and ratify the Revised European Social Charter, the UNESCO Convention against Discrimination in Education, the European Convention on the Legal Status of Migrant Workers, and the European Convention on the Participation of Foreigners in Public Life at Local Level. ECRI also hopes that Switzerland will make a declaration under Article 14 of the Convention for the Elimination of All Forms of Racial Discrimination, allowing the possibility for individuals and groups of individuals to file petitions before the Committee for the Elimination of Racial Discrimination.

B. Constitutional provisions and other basic provisions

2. Article 4 (1) of the Constitution lays down that all Swiss are equal before the law. Equality before the law constitutes a human right, and, in pursuance of Article 4 of the Constitution, also applies to non-citizens, save when Swiss citizenship plays a primordial role in the matters on which rules are to be issued. In its first report, ECRI noted that it could be desirable that the principle of equality before the law for citizens and non-citizens be made more explicit in legislative texts. The new Federal Constitution, which will enter into force in 2000, does in fact contain the principle that « everyone is equal before the law ».
3. Although the Constitution at present does not expressly mention race or skin colour, there is no doubt that the ban on discrimination implicitly covers these criteria. Furthermore, the new Federal Constitution contains the following statement in Article 8 (2): "No one must suffer discrimination on account of their origin, race, sex, age, language, social status, way of life, religious, political or philosophical convictions or because of any bodily, mental or psychic deficiency". Articles 7 and 9 generally protect human dignity and prohibit arbitrary treatment of any person. Moreover, the Constitutions of many cantons explicitly prohibit racial discrimination.

C. Criminal law provisions

4. Article 261 bis of the Criminal Code, adopted to implement Switzerland's ratification of the Convention for the Elimination of All Forms of Racial Discrimination, penalises public incitement to racial hatred or discrimination, spreading racist ideology, denying crimes against humanity and refusing to supply a public service. Article 63 of the Criminal Code increases the penalty for offences motivated by racism.
5. The interest legally protected by Article 261 bis is public peace, not merely the dignity of a private person, even if they are the victim of the offence. Racist offences are prosecuted *ex officio* as they break the peace. It should be noted that Article 261 bis concerns only the public sphere, and does not in principle cover contractual relations, such as leases or employment contracts (cf paragraph 10).
6. Since Article 261 bis is relatively new, a detailed evaluation of its implementation has not as yet been carried out. ECRI understands that out of a total of around 130 sentences passed so far, a quarter have resulted in convictions. However, some issues have been raised concerning the scope and application of this article. For example, there has been criticism that Article 261 bis does not apply when the racist insult in question involves wide categories of persons rather than single groups, as in the case of racist references to asylum seekers or foreigners in general. Secondly, the definition of a statement or act committed publicly may be problematic. Furthermore, the issue of how far the article can be used in the sphere of private contractual relations may need further clarification.
7. Despite some controversy on article 261 bis and its possible shortfalls, Parliament decided early in 1999 not to amend the provision. ECRI encourages the Swiss authorities to closely monitor the implementation of this provision, particularly through the collection and publication of data on the number of cases reported, the follow-up given to complaints, and the outcome of cases brought before the courts, at federal and cantonal level. The authorities should also consider further whether article 261 bis might be improved or clarified in some areas, including those mentioned above.
8. Membership in associations practising racial discrimination is not prohibited. Switzerland entered a reservation under Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination in this respect¹. Article 260 ter of the Penal Code, however, makes it illegal to join or support an organisation whose nature and membership are secret and whose purpose is the commission of criminal acts of violence of a discriminatory nature. In this respect, ECRI draws attention to its general policy recommendation N° 1, that governments should "take measures, including where necessary legal

¹ Cf Report submitted by Switzerland to CERD

measures, to combat racist organisations ... including banning such organisations where it is considered that this would contribute to the struggle against racism”.

D. Civil and administrative law provisions

9. The principles of individual freedom and freedom of contract are pillars of the Swiss legal system. According to prevalent opinion and theory, the prohibition of discrimination, as defined in Article 4 of the Constitution, cannot have a direct effect on relations between individuals. Nevertheless, legal theory does acknowledge the indirect horizontal effect of the individual freedoms established in the Federal Constitution.²
10. In their report to CERD, the Swiss authorities note that once in employment, non-citizens are protected by Article 328 of the Code of Obligations which states that “the employer, in his relations with labour, shall protect and respect the personality of the worker”. Article 336 para 1 of the Code of Obligations protects against dismissal on racial grounds in that it stipulates that dismissal is wrongful if imposed upon one party for a reason inherent in the personality of the other party.
11. ECRI recalls its general policy recommendation N° 1 which calls on governments to “ensure that national ... civil and administrative law expressly and specifically counter racism, xenophobia, antisemitism and intolerance, inter alia by providing that discrimination in employment and in the supply of goods and services to the public is unlawful”. ECRI therefore urges the Swiss authorities to introduce relevant civil and administrative law provisions covering discrimination in all fields of life, including the conclusion of contracts in areas such as housing and employment.

E. Specialised bodies and other institutions

12. The Federal Commission against Racism was set up following Switzerland’s ratification of the CERD. Its task is to investigate racial discrimination, encourage better understanding between persons of different ethnic or religious groups, combat all forms of direct or indirect racial discrimination and give special attention to prevention as a way of making its activities effective. It undertakes public relations work and campaigns, advises and supports the federal authorities, offers guidance and support to individuals, in connection with its mediation role, and collaborates with federal, cantonal and local authorities, organisations and groups. It also analyses racial discrimination.

² Cf Report prepared by Swiss Institute of Comparative Law

13. When Parliament discussed the establishment of the Federal Commission against Racism, it was decided not to attribute to it the functions of Ombudsman. Nevertheless, the terms of reference of the Commission do allow for some role for the President of the Federal Commission as an Ombudsman against racism, receiving complaints and advising clients about their rights, and presenting cases to the relevant authorities. However, this role is fairly limited and does not allow for powers of enforcement.
14. ECRI is of the opinion that Switzerland should strengthen the role and powers of the Federal Commission against Racism in line with the guidelines set out in ECRI's general policy recommendation N° 2 on specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance. For example, the Commission at present operates under the authority of the Federal Department for Home Affairs, and while it has a high degree of independence in practice, a more clear separation from the governmental structure might be an additional safeguard.
15. ECRI also feels that the creation of the institution of the Ombudsman or similar body with powers to investigate complaints of racial discrimination, would be most desirable in Switzerland, preferably with similar bodies at cantonal level.
16. At cantonal and municipal level, institutions with similar functions to the Federal Commission against Racism have been set up in some cantons. For example, the canton of Zug has set up a commission to combat racism. Consultative institutions for foreigners have also been set up in some communes, and in several of the cantons.
17. There also exists in Switzerland a Federal Commission on Foreigners which has the mandate of identifying opportunities for improving the co-existence of Swiss and foreigners and to elicit and support initiatives in that connection. This Commission has existed since 1970. It liaises with foreigners' associations, and with immigration offices in the cantons and cities. A Federal Commission for Refugees, established in December 1983, acts as an advisory body to the federal authorities. These bodies are both within the framework of the federal authorities.

F. Law enforcement personnel

18. There have been some reports concerning police ill-treatment of suspects in custody, particularly of non-citizens and Swiss of foreign origin³. The UN Committee against Torture as well as the Council of Europe's Committee against Torture noted infringements during arrests and during interrogations, mostly concerning non-citizens and Swiss of foreign origin. In line with its

³ Cf, inter alia, the concluding observations of CERD on the first report submitted by Switzerland, reports by Amnesty International, and the report submitted by the Swiss Forum against Racism to CERD

general policy recommendation N° 1, ECRI urges the Swiss authorities to “ensure that the police provide equal treatment to all members of the public and avoid any act of racism, xenophobia, antisemitism and intolerance; develop formal and informal structures for dialogue between the police and minority communities and ensure the existence of a mechanism for independent enquiry into incidents and areas of conflict between the police and minority groups”. ECRI stresses in particular the importance of setting up an independent body to investigate complaints of police ill-treatment. In the field of police training, ECRI notes that the police academy in Neuchâtel provides relevant human rights training for police from the various cantonal police forces, but feels that the subject of racism and discrimination should be included in a more systematic fashion at cantonal level, both during initial training and as an on-going process. More active efforts should also be made to recruit members of under-represented minority groups as police officers.

G. Vulnerable groups

- *Antisemitism*

19. At the end of 1996, Switzerland was confronted with a claim for restitution of monies, deposited in dormant Swiss bank accounts, which had belonged in particular to Jews who later fell victim to the Holocaust. The resulting publicity and accusations caused tensions in Switzerland, notably a rise in antisemitism, not necessarily directed against Swiss Jews but against organisations representing the Jewish community worldwide. This increase in antisemitism was manifested for example in the printed media, in the forms of readers letters published in newspapers; the federal police also reported a massive increase in the amount of antisemitic and Nazi propaganda material confiscated in 1997 and 1998. The Swiss authorities reacted promptly to this rise in antisemitism by publicly condemning such manifestations and by appointing a Task Force on World War II, which has in the course of its work looked into some of the issues of antisemitism in Switzerland. The Federal Commission against Racism has also produced a report on antisemitism in Switzerland which has been welcomed by the federal authorities, who have declared their intention to study and implement the recommendations contained therein.
20. Although the increase in antisemitic feelings in Switzerland appears to have peaked, ECRI feels that the situation should be closely monitored. Continued efforts should be made to combat antisemitism, for example through specific teaching on this issue in schools, and through a commitment on the part of politicians to speaking out against any expressions of antisemitism in political or public life. One possible positive result of the above-mentioned public reaction which might be built upon is that it may have served as a “catalyser”, leading to more willingness to discuss issues of antisemitism in Switzerland and to mobilise against it : this may also lead to discussion on other issues connected with intolerance in Switzerland. Another positive consequence may

be that the Jewish community in Switzerland, which until recent events tended to keep a rather low profile, may be more able to take a stand on certain issues of interest to this community .

- ***The « Jenisch » (Roma/Gypsy community)***

21. The Swiss authorities, in their first report to CERD, state that « it is true that, as elsewhere in Europe, nomads living in Switzerland have suffered harassment or even persecutions ». The cantonal system in Switzerland leads to difficulties for nomadic Jenisch in a number of areas, notably access to schooling, permission to sejourner and permission to practice their trade and traditional professions. A foundation has recently been created entitled « Ensuring the future of Swiss travellers », and the Federal Commission against Racism is also examining the situation of the Jenisch population. ECRI understands that a new federal law is in consultation concerning itinerant professions, and hopes that such a law will improve the situation in this field. ECRI encourages the authorities to identify means to ensure that the cantonal system does not lead to discrimination against travelling Jenisch, particularly in the fields of employment and education.

- ***Asylum seekers***

22. Switzerland receives quite significant numbers of asylum-seekers compared to other European countries⁴. The issue of asylum seekers has been the subject of much debate recently, particularly in the context of the preparation of a new law on asylum. One issue which has been widely publicised and criticised is the introduction of « *mesures de contrainte* » or measures of constraint. These measures allow, inter alia, for the detention of asylum-seekers whose claims have been rejected and who are considered likely to abscond before being expelled, and of persons whose identity or country of origin cannot be established. Apparently, minors from the age of fifteen years may also be subject to such measures, and it has been reported that due to lack of facilities, such persons, who have committed no crime other than being considered to sejourner in Switzerland illegally, may be kept in normal prisons alongside convicted criminals. ECRI stresses that immigrants and asylum seekers, even if they are considered to be sejournering illegally in Switzerland, should not be treated as criminals, and that any measures taken with regard to such persons should reflect this approach.
23. Asylum seekers whose claims are rejected by the Office for Refugees have the possibility of appeal to an independent Asylum Commission, which has the same status as the federal court. However, they have to rely on non-governmental organisations for assistance in bringing their appeal if they lack

⁴ Nearly 24 000 asylum requests in 1997 and over 41 000 in 1998

the necessary funds. ECRI considers that the right to appeal against negative decisions should be backed up with State-funded legal aid where necessary.

24. There appears to be a tendency in public opinion to associate asylum seekers with criminality, particularly drug dealing, and to over-estimate the financial burden represented by asylum-seekers. Such misperceptions are sometimes fuelled by elements of political discourse or by the attitudes displayed by representatives of public bodies such as the police, which may themselves have a distorted picture of the presence of asylum-seekers in Switzerland. ECRI notes that awareness-raising and educative measures, both among the general public and within key institutions such as the police, are most important in rectifying misconceptions and combating prejudices.

H. Education

25. ECRI is concerned to learn that recent initiatives have been taken in a few Swiss schools to instigate segregated schooling for children who do not have sufficient knowledge of the official language of instruction. The cantonal directors of education have spoken against this practice ; however, it appears that some currents of public debate are in favour of such measures. ECRI stresses its opinion that moves to provide segregated schooling are contrary to international law and should be discouraged. ECRI notes that the Federal Government has recognised in a declaration to the Parliament that such practices would be contrary to the Federal Constitution and the international Convention on the Rights of the Child. Additional measures should be taken to counter any problems which may exist in the field of education and which may have given rise to such initiatives. For example, measures to assist non-Swiss children in catching-up where necessary – such as additional language lessons for children whose mother tongue is not one of the official languages of Switzerland – could be strengthened and awareness-raising campaigns carried out among Swiss parents, in order to counter any anxieties about the possible effects of mixed classes on their children’s education.
26. The Swiss authorities report that – as in many other European countries – it is estimated that a number of clandestine workers live in Switzerland. ECRI notes that Swiss schools accept all pupils without making enquiries into the status of their parents. Children of asylum-seekers are admitted to ordinary Swiss schools, and at the same time attend language lessons. ECRI considers it valuable that Switzerland ensures the education of all children living on her territory.

I. Monitoring the situation

27. Little information is systematically collected in Switzerland regarding the extent of racism and discrimination. ECRI reiterates the recommendation made in its general policy recommendation N° 1, and urges the Swiss

government to « collect, in accordance with European laws, regulations and recommendations on data protection and protection of privacy, where and when appropriate, data which will assist in assessing and evaluating the situation and experiences of groups which are particularly vulnerable to racism, xenophobia, antisemitism and intolerance. » Such a monitoring task should involve the recording of information from the cantonal level, with collation at federal level. ECRI also recalls in this respect its general policy recommendation N° 4 in which it calls on governments to carry out surveys into the experiences and perceptions of racism and discrimination from the point of view of potential victims.

SECTION II : ISSUES OF PARTICULAR CONCERN

28. In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Switzerland, ECRI would like to draw attention to the question of the acquisition of citizenship for non-citizens who have resided in Switzerland for long periods, and to a number of other issues related to the situation of the non-citizen population.

J. Acquisition of citizenship

29. Switzerland has a large non-citizen population, representing almost 20 % of the population. However, despite this large non-citizen population, Switzerland does not consider itself to be a country of immigration, but rather has generally linked the presence of its non-citizen population closely to the demands of the labour market. The rules governing the acquisition of Swiss citizenship, even for long-term non-citizen residents and the children of non-citizens born and brought up in Switzerland, remain strict, and the system, which operates at federal, cantonal and communal level, complex. In fact, only about 2% of persons of foreign origin residing in Switzerland have received citizenship, despite the fact that over half of non-citizens in Switzerland have resided there for over 20 years : it has been commented that if all the persons possessing long-term residence permits (C-permits) in Switzerland obtained citizenship, the percentage of non-citizens in Switzerland would fall to around 6%.
30. The system for the obtaining of citizenship is that certain legal requirements have to be fulfilled at federal level, but that at cantonal and communal level, citizenship also has to be granted. This granting of citizenship at the cantonal and communal levels is not an automatic right once certain requirements are fulfilled : it depends upon a decision made either by the cantonal or communal Parliament, or, if no such body exists at communal level, by a vote of the population. All three levels of citizenship must be obtained in order to become a Swiss citizen.

31. The residence requirement in order to gain citizenship is long – a non-citizen must have resided legally in Switzerland for at least twelve years or six years for young people. The cantonal level also requires a varying length of residency in the canton, and such conditions can also apply at communal level. This can make the acquisition of citizenship at these levels very difficult for persons who have moved within Switzerland, or even within an agglomeration. The requirement that persons requesting citizenship speak the majority language of the canton or commune, given Switzerland's linguistic diversity, may also create difficulties. Moreover, the cantons and communes charge a fee for the acquisition of citizenship which in some cases is very high and may prove difficult to fulfil for some persons.
32. ECRI is concerned that the system for the granting of citizenship at cantonal and communal level may leave room for discriminatory practices in the granting of citizenship, particularly in cases where citizenship requests are decided upon by a voting procedure of the population of a commune. Although it is considered that the decision-making process when carried out by cantonal or communal parliaments is generally less susceptible to discriminatory decisions, it has been reported that in some communes, particularly in rural areas, discrimination in the granting of citizenship does occur. It is difficult to obtain concrete evidence of discriminatory practices, particularly since an explanation of the motivation of the decision does not have to be provided ; however, several sources report that non-citizens from certain backgrounds – either religious or ethnic - are more likely to be refused citizenship at this level even if they fulfil the residence and other legal requirements.
33. In this respect, ECRI notes with interest the intention of the Federal Commission against Racism to examine the situation in order to ascertain what problems of discrimination might exist. ECRI stresses that in its opinion, the acquisition of citizenship should not depend on a popular decision which may leave room for arbitrary or discriminatory practices. It encourages the Swiss authorities to identify procedures, in close collaboration with cantonal and communal authorities, to ensure that the granting of citizenship at all three levels of the Swiss system is applied in a clear, coherent and non-discriminatory fashion, and that appeal mechanisms exist to remedy any discrimination based on non-justifiable criteria such as origin or religion.
34. ECRI deplores that a referendum carried out a few years ago regarding the facilitation of naturalisation for young people resulted in a negative decision of the population, but welcomes the fact that some cantons, such as Neuchâtel, have nevertheless taken steps to facilitate the acquisition of citizenship for young people who may have passed their whole lives in Switzerland. ECRI encourages other cantons to follow such good practices, accompanied where necessary by awareness-raising campaigns and education among the general population to encourage acceptance of these changes. ECRI also encourages the federal authorities – which are currently preparing a new proposal on this issue - to continue in their efforts to facilitate the naturalisation process for

young non-citizens and for other non-citizens with long-term residence in Switzerland.

K. Other issues affecting non-citizens

- *Granting of residence permits*

35. The granting of residence and work permits to non-citizens is closely linked to the needs of the labour market. Until recently, the so-called « three circle system » applied, under which work permits were granted preferentially to citizens of EU and EFTA countries, then to citizens of certain other countries – considered to be traditional partners in the labour field - and only rarely to citizens from the rest of the world. The philosophy behind this system was based on « capacity for integration », and while the Swiss authorities state that there was no intention to discriminate on racial grounds, they did admit that the system might make admission more difficult for persons belonging to other ethnic groups or « races » because of their "limited capacity for integration"⁵. It is noteworthy that during the war in former Yugoslavia, for example, citizens of former Yugoslavia were removed from the second circle and considered to fall within the third circle.
36. When ratifying CERD, Switzerland made a reservation allowing this « three-circle » policy to continue. However, the system was the subject of much criticism both within Switzerland and abroad, and it has now been withdrawn and replaced by a « two-circle » system, which makes a distinction between EU/EFTA countries and the rest of the world. However, concerns have been expressed that even if the new system is intended to respond to the concerns expressed above, in practice the underlying philosophy of « capacity for integration » remains unchanged, and this may mean that possible discrimination continues against certain non-citizens.
37. As regards the granting of residence permits, the regulations remain strict. The so-called « B-permit » is a one-year renewable permit, whereas a « C-permit » is granted for ten years. Non-citizens generally have B-permit status for several years before obtaining a C-permit. There are reports that the acquisition of a C-permit is becoming more difficult, and that persons holding B-permits are vulnerable to possible refusals to renew their permits for reasons such as minor offences committed by the holder or members of his family, loss of employment, or reliance on welfare benefits. The Swiss authorities, in their report to CERD, note that « It may happen that aliens holding annual permits have difficulty in renewing their permit if they and their family are long-term beneficiaries of public assistance ». The Forum against Racism reports that not only holders of annual permits but also non-citizens with a right of domicile in Switzerland may be affected if they have

⁵ Cf report submitted by Switzerland to CERD, CERD/C/304/Add.44

been receiving social welfare over a long period of time, and comments that due to widespread unemployment, it is increasingly likely that such measures will be applied⁶. Decisions on the renewal or otherwise of residence permits are taken by the office for foreigners, which is the authority responsible for all matters pertaining to non-citizens. ECRI is concerned to learn that even if a judge has not taken a decision to expel from Switzerland a non-citizen convicted of a crime, the office for foreigners can nevertheless withdraw the residence permit of that person, and that the possibilities of recourse in such cases are limited.

38. The rights to family reunification are also somewhat strict in some cases : for example, one canton only allows family reunification to take place when certain criteria are fulfilled, such as the assessment of the family in question as « success-oriented ». ECRI stresses that such criteria are non-objective and that the conditions guaranteeing the right to family reunification should be clear and unambiguous.
39. ECRI considers that under conditions such as those described above, non-citizens who may have been living in Switzerland for many years and have strong family and other ties in the country, remain in a vulnerable position. It urges the Swiss authorities to ensure that the residence permits of non-citizens having resided for some time in Switzerland are only withdrawn under exceptional and clearly-defined circumstances, and that adequate recourse to appeal against such decisions is made available. ECRI understands that such issues are being discussed in the context of the drafting of the new law on foreigners, and hopes that the law when adopted will solve any problems.

- ***Climate of opinion***

40. Although open manifestations of racism are quite rare in Switzerland, ECRI is concerned that a climate of intolerance or xenophobia towards non-citizens and those who are different from the native Swiss population appears to persist. As outlined above, the situation of non-citizens is often rather precarious, and this may lead to difficulties in their integration and participation as members of Swiss society : on the side of the Swiss population, they may not yet be considered as a permanent part of Swiss society, and some non-citizens themselves may be reluctant to organise themselves to extend their rights exactly because of their insecure right of residency.
41. In the past, the emphasis has been on the duty of non-citizens themselves to fit into Swiss society, and few integration measures were taken by the authorities. ECRI welcomes the efforts undertaken in certain cantons to encourage the participation of non-citizens in society while respecting their right to retain their own cultural identity. For example, in the cantons of

⁶ Cf Report sent by the Forum against Racism to the CERD, «La Suisse et son racisme ».

Neuchâtel and Jura, non-citizens enjoy the right to vote in cantonal and communal elections, and although participation is actually rather low, this right is valued by non-citizen communities as a sign of their acceptance in society. Another good example of an initiative to improve the integration of non-citizens into the public life of Switzerland are the consultative chambers for immigrants which exist in Lausanne and in some other cities and which aim to implicate non-citizens in the decision-making process.

42. Despite such good examples, however, there still seems to lack an acceptance of Switzerland as a truly multi-cultural society whose members may feel a sense of Swiss identity alongside another cultural or ethnic identity. Moreover, feelings of xenophobia and intolerance towards non-citizens are not uncommon, and may even be increasing. Such feelings may be exacerbated by discourses in public life which play on unwarranted fears of the population (for example, links made between asylum-seekers and criminality or discourses which call for limitations on the numbers of non-citizens in Switzerland). Such references are in fact one feature of some elements of political discourse at the present time, particularly in the context of the preparation of new laws on asylum and on foreigners. Some of the tabloid press also resort to xenophobic discourse as regards certain issues. ECRI encourages politicians and other opinion leaders to refrain from utilising such issues and to take a firm stand against any manifestations of intolerance or xenophobia towards non-citizens. Representatives of public bodies with responsibility for dealing with issues of non-citizens should also refrain from using language or making associations which might create prejudices or foster a climate of intolerance towards non-citizens. ECRI is of the opinion that an increased recognition of modern Switzerland as a multicultural society, where new forms of plurality co-exist with traditional ones, would contribute greatly to solving many of the problems outlined above.

BIBLIOGRAPHY

This bibliography lists the main published sources used during the examination of the situation in Switzerland : it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

1. CRI (98) 27: Report on Switzerland, European Commission against Racism and Intolerance, Council of Europe, March 1998
2. CRI (96) 43: ECRI general policy recommendation n°1: Combating racism, xenophobia, antisemitism and intolerance, European Commission against Racism and Intolerance, Council of Europe, October 1996
3. CRI (97) 36: ECRI general policy recommendation n°2: Specialised bodies to combating racism, xenophobia, antisemitism and intolerance at national level, European Commission against Racism and Intolerance, Council of Europe, June 1997
4. CRI (98) 29: ECRI general policy recommendation n° 3: Combating racism and intolerance against Roma/Gypsies, European Commission against Racism and Intolerance, Council of Europe, March 1998
5. CRI (98) 30: ECRI general policy recommendation n°4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, European Commission against Racism and Intolerance, Council of Europe, March 1998
6. CRI (98) 80 : Legal measures to combat racism and intolerance in the member States of the Council of Europe, ECRI, Strasbourg, 1998
7. Code pénal suisse, Chancellerie Fédérale, 1998
8. « Loi fédérale sur les mesures de contrainte en matière de droit des étrangers » 18 March 1994
9. « Loi sur l'asile » 5 October 1979
10. « L'Asile en Suisse : un aperçu du domaine de l'asile », Office fédéral des réfugiés, Hiver 1998/1999
11. « Communauté de travail pour l'intégration des étrangers », Rapport 1998, Bureau du Délégué aux étrangers du Canton Neuchâtel
12. « Les nomades en Suisses », Rapport de la Commission d'étude désignée par le département fédéral de justice et police, June 1983
13. « Anti-Semitism in Switzerland », Federal Commission against Racism, November 1998
14. CDMG (97) 17 rev : « Recent developments in policies relating to migration and migrants », European Committee on Migration, Council of Europe, January 1998

15. CDMG (98) 11 : « Security of Residence of Long-Term Migrants – A comparative Study of law and practice in European Countries », European Committee on Migration, Council of Europe, February 1998
16. MMG – 6 (96) 6 Addendum 1 : « Déclaration écrite – Suisse », European Committee on Migration, June 1996
17. MMG-5 (93) 11 : « Déclaration écrite sur le Thème 2 (Racisme, xénophobie, Intolérance) présentée par la délégation suisse, European Committee on Migration, Council of Europe, 1993
18. Etudes et travaux n° 53 : « Migrants et minorités dans la Communauté », European Committee on Migration, Council of Europe, 1996
19. CERD/C/270/Add.1 : « Initial reports of States parties due in 1995 – Addendum : Report of Switzerland », CERD, United Nations, March 1997
20. CERD/C/304/Add.44 « Concluding observations of the Committee on the Elimination of Racial Discrimination », CERD, United Nations, March 1998
21. E/C.12/1/Add.30 : « Concluding observations of the Committee on Economic, Social and Cultural Rights », Committee on Economic, Social and Cultural Rights, United Nations, December 1998
22. CCPR/C/81/Add.8 : « Rapports initiaux que les Etats parties devaient présenter en 1993 – Additif », Committee on Civil and Political Rights, United Nations, May 1995
23. HRI/CORE/1/Add.29 : « Document de base constituant la première partie des rapports des Etats parties », United Nations, July 1993
24. E/1995/111/Add.1 : « Rapport du Secrétaire général – Additif », United Nations, July 1995
25. US Department of State « Switzerland : Country Report on Human Rights Practices for 1997 », January 1998
26. US Department of State « Switzerland Country Report on Human Rights Practices for 1998 », February 1999
27. « Rapports sur le Racisme et la Xénophobie dans les médias », Groupe parlementaire contre le racisme et la xénophobie, Januar/February 1999
28. « Local Self-Government, Territorial Integrity and Protection of Minorities », International Colloquium, Lausanne, 25-27/4/1996, Swiss Institute of Comparative Law, Zurich 1996
29. « AI Report 1998, Switzerland », Amnesty International
30. « AI Report 1997, Switzerland », Amnesty International
31. « AI Report 1996, Switzerland », Amnesty International

32. « Switzerland, Allegations of ill-treatment in police custody », Amnesty International, AI Index : EUR 43/02/97, November 1997
33. «Human Rights Watch World Report 1999 » Human Rights Watch
34. « Racism in Switzerland », First NGO ("shadow") report on Switzerland to the UN, Hans Stutz, Forum against Racism, February 1998
35. « Racism in Switzerland », Appendix of the "Association Romande contre le racisme" to the ("shadow") NGO report on the Initial Report of Switzerland to the UN Committee on the Elimination of Racial Discrimination, Karl Grünberg,
36. « Le pays de Neuchatel par ses résidents étrangers », Bureau du délégué aux étrangers du Canton Neuchâtel, 1994
37. « Rapport 1998 », CRIDA
38. Pierre Gentile and Maya Jegen « Paradise News» in New Xenophobia in Europe – Baumgartl & Favell – Kulwer Law International
39. « Droit de vote pour les étrangers au niveau communal », Sandrine Salerno, Carrefour, 12/12/1998
40. « La politique des trois cercles a vécu », Sandrine Salerno, Carrefour, 12/12/1998
41. « Extremism in Europe » coordinated by Jean-Yves Camus – CERA 1997 – Article by Eugenio D'Alessio
42. Newsletter n° 20 « CARREFOUR », September 1998
43. Newsletter n° 19 « La lettre de SOS Racisme – Carrefour », June 1998

