

# ECRI

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

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## European Commission against Racism and Intolerance

### SECOND REPORT ON THE UNITED KINGDOM

Adopted on 16 June 2000

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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 the United Kingdom is dated 6 March 1998 (published in January 1999). 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 the United Kingdom took place on 9-12 May 2000. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the British 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 each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the British national liaison officer whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.*

*Furthermore, ECRI would 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 16 June 2000 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***

Over recent years, the United Kingdom has taken positive steps to counter racism and discrimination, including: the amendment of the anti-discrimination legislation to cover direct and indirect discrimination by public authorities in all functions and to include an enforceable duty on public authorities to promote racial equality; the strengthening of the battery of criminal law provisions to fight against racist behaviour; the elaboration of a strategy to counter institutional racism in the police in response to the Stephen Lawrence Inquiry Report.

Problems of xenophobia, racism and discrimination, however, persist and are particularly acute *vis-à-vis* asylum seekers and refugees. This is reflected in the xenophobic and intolerant coverage of these groups of persons in the media, but also in the tone of the discourse resorted to by politicians in support of the adoption and enforcement of increasingly restrictive asylum and immigration laws. Racial prejudice in the police continue to constitute an element of concern. Criminal and civil law provisions are not always effective in countering racist, xenophobic or discriminatory behaviour.

**In the following report, ECRI recommends to the British authorities that further action be taken to combat xenophobia, racism and discrimination in a number of areas. These recommendations cover, *inter alia*, the need to address the hostile climate concerning asylum seekers and refugees. The need to ensure the effectiveness of criminal law provisions, notably on incitement to racial hatred, and the need to further fine-tune the working of the civil anti-discrimination legislation is also stressed. ECRI also calls for a swift and thorough application of all policies to address institutional racism in the police. Emphasis is also put on the need to ensure that the educational system meet the demands of a diverse society.**

## **SECTION I: OVERVIEW OF THE SITUATION**

### **A. International legal instruments**

1. The United Kingdom has signed and ratified a large number of international legal instruments relevant in the field of combating racism and intolerance. Since the publication of ECRI's first report, The United Kingdom signed, in March 2000, the European Charter for Regional or Minority Languages. ECRI welcomes this development and encourages a swift ratification of this instrument by the British authorities. As concerns the Revised European Social Charter, to which the United Kingdom is a signatory, ECRI understands that the ratification of this instrument is under active consideration and encourages a rapid finalisation of this process. ECRI also encourages the British authorities to ratify the Convention on the Participation of Foreigners in Public Life at Local Level as soon as possible and to sign and ratify the European Convention on Nationality. Furthermore, ECRI reiterates its call for ratification by the British authorities of the ILO Convention concerning Discrimination in Respect of Employment and Occupation and of the European Convention on the Legal Status of Migrant Workers.
2. As concerns rights of individual petition under international treaties, in its first report ECRI recommended that the UK accept Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, allowing individual communications to be considered by the Committee for the Elimination of Racial Discrimination. ECRI also notes that the United Kingdom has not ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which provides for the right of individual petition. The British authorities have stated that, in view of the forthcoming entry into force of the Human Rights Act<sup>1</sup>, the granting of rights of individual petition under these treaties would not be timely, as the complaints procedures would detract from the work to implement this Act. ECRI considers, however, that acceptance of Article 14 and ratification of the Optional Protocol would enhance protection of victims of discrimination and therefore encourages the British authorities to accept these instruments.

### **B. Constitutional provisions and other basic provisions**

3. As noted by ECRI in its first report, although highly desirable, the entrenchment of guarantees against racial discrimination - in such manner that they cannot be repealed- is prevented by the British constitutional doctrine of the sovereignty of Parliament, according to which the Parliament of Westminster remains competent to repeal any legislation, even if the United Kingdom is bound by international law to have and enforce such legislation. Therefore, incorporation of conventions into domestic legislation or a bill of rights was previously not accepted on the grounds that it would enable the judiciary to strike down legislation made by the Parliament, therefore changing the nature of the constitutional relationship between Parliament and the Courts.

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<sup>1</sup> See below, *Constitutional provisions and other basic provisions (para.4)*.

4. Since the preparation of ECRI's first report, however, an important development has taken place in this field, namely the adoption, in November 1998, of the Human Rights Act. This Act, which will be implemented from October 2000, gives further effect in domestic law to the rights and freedoms set out in the European Convention on Human Rights (ECHR). On the one hand, the Act requires all legislation to be interpreted as far as possible in a way which is compatible with the ECHR. Primary legislation held to be incompatible will continue to be enforced, but the higher courts will be able to make a declaration of incompatibility, which will enable the relevant Government Minister to amend the legislation by order or the Parliament to amend the legislation by fresh primary legislation. On the other hand, the Act makes it unlawful for public authorities (including, *inter alia*, the police, courts and tribunals and Government departments) to act in a way which is incompatible with the rights set out in the ECHR. Courts and tribunals which find that a public authority has acted unlawfully will be able to award whatever remedy is within their jurisdiction and seems appropriate.
5. ECRI welcomes the adoption of the Human Rights Act and hopes that it will strengthen legal protection against discrimination. In this respect, ECRI notes, however, that at present ECHR does not contain an independent prohibition against discrimination, but provides protection against discrimination only with regard to the enjoyment of the rights and freedoms set forth in the Convention. Similarly, the Human Rights Act, as it now stands, does not provide a general superseding guarantee against racial discrimination and ECRI strongly encourages the British authorities to consider how this could be achieved.

### **C. Criminal law provisions**

6. On 31 July 1997, the Home Secretary announced a judicial inquiry into the death of Stephen Lawrence, a young black man who was murdered in Greenwich in April 1993. Stephen Lawrence's death prompted unprecedented debate on racism at the national level. The terms of reference of the inquiry were "to enquire into the matters arising from the death of Stephen Lawrence on 22 April to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes". The Inquiry Report, published on 24 February 1999, found that "institutional racism" played a part in the flawed investigation by the Metropolitan Police Service<sup>2</sup> of the murder of Stephen Lawrence, notably in the treatment of the family of the victims; in the failure of officers to recognise the murder as a racially motivated crime; and in the lack of urgency and commitment in some areas of the investigation. In order to evaluate the evidence and arguments they had heard, the Inquiry committee developed a definition of institutional racism, which is described as "*the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people*".

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<sup>2</sup> Police force policing the London area.

7. Although it has influenced the debate on racism and discrimination within the United Kingdom in ways which go much further than its immediate police context, the Inquiry report contains wide-ranging recommendations for improving the handling of racist crimes. The Home Secretary has produced an Action Plan in response to these recommendations and established a Steering Group for the oversight of this plan. ECRI understands that several of these recommendations have already been put into practice and encourages the British authorities to speed up the necessary work for the implementation of the remaining recommendations. ECRI considers that it is particularly important that the momentum created by the Stephen Lawrence Inquiry Report is not lost and that all possible work in the areas highlighted by the report is carried out while public attention and debate are focussed on these issues. At the same time, ECRI stresses that most measures need ongoing monitoring and follow-up and it therefore urges the authorities to ensure that the implementation of these recommendations is continuously reviewed in the future. In addition, ECRI stresses the importance of implementing, to the extent possible, the recommendations contained in the Inquiry Report in all forces throughout the country.
8. In its first report, ECRI noted the absence of criminal law provisions defining common offences - but with a racist nature - as specific offences and the lack of provisions enabling the racist motives of the offender to be taken into account, although it noted the case-law requiring judges to consider evidence of racist motivation as an aggravating factor in sentencing. ECRI welcomes the fact that the Crime and Disorder Act 1998, in force since September 1998, addresses both aspects. On the one hand, it creates new offences of racially aggravated violence and harassment; on the other, it gives statutory force to the case-law which requires judges to consider evidence of racist motivation for any offence as an aggravating factor in sentencing. In order to further ensure that the racial element of an offence is not overlooked, however, ECRI suggested in its first report that consideration be given to the introduction of a statutory provision requiring the prosecuting authority to place before the courts any evidence tending to show that a specific offence has been committed on racial grounds. ECRI encourages the British authorities to further consider this aspect. ECRI furthermore encourages the British authorities to ensure that monitoring of the use of the new provisions is carried out throughout all stages of the criminal procedure (offences reported to the police, follow-up given by the police, Crown prosecution Service and sentences) and that adequate training is provided for all those who are involved in the prosecution and sentencing of these offences.
9. Although the number of racist incidents recorded by the police has dramatically increased in recent years, (partly due to better recording techniques), the official figures are estimated to under-represent the number of incidents occurring. Findings from the British Crime Survey on ethnic minorities' experience of crime show a considerable gap between incidents perceived to be racially motivated by victims and the number of incidents recorded as such by the police. Although a lack of confidence in the possibility of redress on the side of members of ethnic minorities partly explain this gap, under-recording by the police also plays a role. In its first report ECRI stressed the need for a more thorough system of monitoring of racist incidents. ECRI notes that, following a recommendation in this sense in the Stephen Lawrence Inquiry Report,

recording of racist incidents is being made according to a new definition, whereby a racist incident is "any incident which is perceived to be racist by the victim or any other person". As concerns reporting, ECRI notes that steps are being taken to enable reporting at locations other than police stations. ECRI encourages the British authorities to continue to work to improve the standards of reporting and recording of racist incidents.

10. As a reaction to the Lawrence case, in 1998 the Metropolitan Police established a Racist and Violent Crime Task Group to counter the activities of those who commit racist and homophobic incidents and crimes. The Task Group targets extremist groups and individuals that commit or incite violent crimes and those who advocate and claim such attacks. ECRI urges the British authorities to consider the establishment of similar specialised units in police forces outside the London area.
11. As concerns incitement to racial hatred, which is penalised under Part III of the Public Order Act (POA), in its first report, ECRI noted that under section 27 of the POA the Attorney General's consent is necessary for the prosecution of offences of incitement to racial hatred. ECRI reiterates that the more usual procedure in sensitive cases whereby the consent of the Director of Public Prosecutions must be obtained would be more appropriate for prosecutions under Part III. More generally, ECRI urges the British authorities to keep the effectiveness of these provisions under review, especially considering the fact that, despite the low number of cases brought under these provisions, racially inflammatory material has frequently appeared, particularly in the printed media and on the Internet<sup>3</sup>.
12. As noted by ECRI in its first report, the Football Act 1991 prohibits football match spectators from taking part in chanting of an indecent or racist nature. Enforcement of this law, however, appears to remain difficult, as shown by the relatively small number of prosecutions as well as the persistence, albeit reduced, of racist chanting. ECRI notes that the Act has recently been amended to facilitate prosecution and encourages the authorities to keep its effectiveness under review. ECRI welcomes some initiatives already underway in this area, such as an agreement between clubs of the Premier Football League to forbid racism within clubs and between players and fans.

- ***Multi-agency approach to racial incidents***

13. In its first report, ECRI expressed its interest in the multi-agency approach - involving close co-operation at local level between the police, local authority housing, education and social services departments, the Crown Prosecution Service, local Racial Equality Councils and voluntary organisations - as a way to develop an effective response to racial incidents. An interdepartmental governmental group, the Racial Incidents Standing Committee (RISC), is tasked *inter alia* with helping multi-agency panels. ECRI encourages the British authorities to support the creation and operation of such panels throughout the country.

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<sup>3</sup> See below, *Media*.

#### **D. Civil and administrative law provisions**

14. As noted by ECRI in its first report, under the Race Relations Act 1976 (RRA) discrimination is unlawful in employment; education, training and related matters; the provision of goods, facilities, services and premises; and the disposal and management of premises. The Act gives individuals a right of direct access to the civil courts and employment tribunals for legal remedies for unlawful discrimination. The Act also establishes a Commission for Racial Equality (CRE), independent of Government, which works towards the elimination of discrimination, promotes equality of opportunity and reviews the working of the RRA.
15. A Race Relations (Amendment) Bill, which contains important modifications to the RRA is currently pending before the Parliament. In response to the Stephen Lawrence Inquiry Report, the main purpose of the Bill is to bring within the scope of the RRA important functions of public authorities, including the police, where, currently, there are no legal sanctions for discrimination on racial grounds. ECRI hopes that this Bill will be adopted by the Parliament in the near future.
16. ECRI notes with interest that, as recommended in the same Report, the Bill extends the vicarious responsibility of Chief Officers of Police for all acts and omissions of their officers which are relevant to the RRA.
17. ECRI is pleased to note that, according to the Bill, unlawful discrimination by public authorities will encompass both direct and indirect discrimination, and underlines, in this respect, the importance of the inclusion of indirect discrimination in order to tackle one of the main aspects highlighted by the Stephen Lawrence Inquiry Report, namely institutional racism.
18. ECRI also welcomes the inclusion in the Bill of a positive duty on specified public authorities to have due regard to the need to promote racial equality and work towards the elimination of unlawful discrimination in carrying out their functions. In order to guarantee a maximum level of effectiveness of this duty, however, ECRI considers that special attention should be devoted to ensuring that the obligations incumbent on public authorities under this duty are as clearly as possible spelled out in the law and that adequate enforcement mechanisms are available<sup>4</sup>.
19. ECRI notes that the Bill contains an exception for discrimination in the exercise of immigration and nationality functions whereby it would not be unlawful to discriminate on grounds of nationality or ethnic or national origin where this is provided for by specified immigration legislation or expressly required or authorised by Ministers. ECRI also notes that the Bill makes special provision for the Parliamentary scrutiny of the operation of this exemption by the appointment of a monitor. Nevertheless, ECRI expresses concern at the possible wide scope for discrimination afforded by the grounds of ethnic or national origin, especially in consideration of the extended powers given by the Asylum Act (1999) to Immigration Officers to enter premises, search and arrest

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<sup>4</sup> See below, *Specialised bodies and other institutions (para 27)*.

people suspected of immigration offences<sup>5</sup>. It therefore encourages the authorities to keep the operation of these powers very closely under review and urgently to reconsider their extent in the light of any evidence of discriminatory practices.

20. ECRI also reiterates the observations made in its first report as concerns the possibility to improve the effectiveness of the existing anti-discrimination legislation in areas which fall outside the scope of the Race Relations (Amendment) Bill. These include the possibility of shifting the burden of proof to the respondent, particularly in employment cases, after a *prima facie* case of discrimination has been made out, and the establishment of the same right to compensation for indirect racial discrimination as for indirect sex discrimination.
21. In its first report, ECRI welcomed the introduction of legislation outlawing racial discrimination in Northern Ireland through the adoption of a Race Relations (Northern Ireland) Order. Another positive step in this direction was the Northern Ireland Act 1998. Section 75 of this Act places a statutory obligation on public authorities to promote equality of opportunity and good relations between certain individuals and groups, including racial groups and persons of different religious beliefs. According to Schedule 9 of the Act, public authorities are required to produce "equality schemes", which state how the public authority proposes to fulfil these duties, and to assess, in certain situations, the impact of their policies and programmes on the categories of persons specified in Section 75. ECRI welcomes the introduction of this statutory duty and the fact that the Equality Commission of Northern Ireland is required to keep under review the effectiveness of the duties imposed by section 75 and to offer advice in this respect. However, it regrets that the obligations incumbent on public authorities under this duty are not legally enforceable.

## **E. Administration of justice**

22. ECRI welcomes the extensive ethnic monitoring of the criminal justice system, which, as noted in its first report, since April 1996 covers stops/searches, arrests, cautions, homicides and deaths in custody. ECRI encourages the British authorities to further extend ethnic monitoring throughout all stages of the judicial process.
23. ECRI considers that the interpretation and study of these data should be given high priority. In particular, ECRI believes that the over-representation of members of ethnic minorities in deaths in custody, stops/searches, and in the prison population merit particularly urgent attention, research and action.

### **- Legal aid**

24. In its first report, ECRI recommended that further consideration be given to the adequacy of legal aid available to victims of racial discrimination. As will be mentioned below<sup>6</sup>, ECRI considers that legal aid should be available for

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<sup>5</sup> See below, Section II (para. 64).

<sup>6</sup> See Employment (para. 36).

representation and assistance in race discrimination cases before the Industrial Tribunals.

25. Legal aid and services have been subject to major reforms through the Access to Justice Act (1999). The British authorities have stated that such reform has as one of its aims to target help to those in most need and on matters of public interest. In particular, civil legal aid is to be focussed on the needs of those who are at risk of social or economic exclusion. In this framework, the Government is establishing a Community Legal Service (CLS) to help all sections of society, particularly the socially excluded, by providing information advice and assistance on a person's legal rights and responsibilities in relation to housing, welfare, benefits, immigration, debts and employment. Concerns have been expressed, however, that the system put in place for the funding of organisations composing the CLS through the Community Legal Service Fund may have a negative impact on ethnic minority organisations and legal advice agencies, but also on the service provided to members of ethnic minorities. ECRI encourages the British authorities in their efforts to monitor the impact of the establishment of this new system on ethnic minorities.

#### **F. Specialised bodies and other institutions**

26. ECRI is aware that the proposed new Joint Parliamentary Committee on Human Rights may wish to consider the arguments relating to the introduction of a Human Rights Commission in order to assist the implementation of the Human Rights Act<sup>7</sup>. ECRI would encourage the new Committee to do so, although it is also aware of the existence of specialised bodies exercising similar functions in other specific areas of human rights. ECRI hopes that the Committee will take into account General Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level as well as the need to ensure that any new body does not dilute the effectiveness of current institutions.
27. As mentioned above<sup>8</sup>, the functions of the Commission for Racial Equality (CRE) include working towards the elimination of discrimination and reviewing the operation of the Race Relations Act (RRA). In order to strengthen the role of the CRE in the implementation of the RRA, in its first report ECRI welcomed the proposal to introduce statutory powers to enable the CRE to enter into legally enforceable undertakings. ECRI reiterates its call for the adoption of this measure. ECRI furthermore considers that the attribution of powers to the CRE to embark on formal investigations without prior evidence of discrimination would also strengthen the CRE's role in the implementation of the RRA. ECRI furthermore feels that the CRE should play a central role in the legal enforcement of the statutory duty on public authorities to promote racial equality<sup>9</sup>. In this respect, it supports the attribution to the CRE of the powers proposed in the Bill to serve non-compliance notices to public authorities who have not fulfilled their obligations in relation to the specific duties, and to apply to courts for orders of compliance with such notices in certain circumstances. It

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<sup>7</sup> See *Constitutional provisions and other basic provisions (para. 4)*.

<sup>8</sup> *Civil and administrative law provisions (para. 14)*.

<sup>9</sup> See *above, Civil and administrative law provisions (para. 18)*.

also welcomes the proposed powers of the CRE to issue Codes of Practice to provide guidance to public authorities on how to fulfil their general and specific duties.

28. The Race Relations (Northern Ireland) Order provided for the establishment of a Commission for Racial Equality for Northern Ireland which became fully operational in August 1997. Through the Northern Ireland Act 1998<sup>10</sup>, however, an Equality Commission has been established which brings together in one body the work of the Commission for Racial Equality for Northern Ireland, and that of other institutions such as the Fair Employment Commission, the Equal Opportunity Commission for Northern Ireland and the Northern Ireland Disability Council. ECRI hopes that the wider scope of this new Commission will not result in a lesser attention being paid to issues related to racism and discrimination.

### **G. Education and training/awareness-raising**

29. Following a recommendation of the Stephen Lawrence Inquiry Report suggesting amendment of the National Curriculum aimed at valuing cultural diversity and preventing racism, in order better to reflect the needs of a diverse society, the British authorities have taken steps in this direction, although most initiatives have not yet been fully implemented. ECRI stresses the need that the review of the Curriculum cover all years from the earliest stages and that teachers are properly trained on how to teach the new subjects.

### **H. Access to public services**

#### **- Education**

30. Noting the over-representation of ethnic minority pupils -- particularly but not only African-Caribbean boys -- in school exclusions, in its first report ECRI recommended steps in order to establish the causes of this phenomenon. It furthermore stressed the importance of reliable statistics -broken down by ethnicity- on the involvement, achievements and progress of pupils, students and trainees from minority groups in order to take appropriate corrective action. The Stephen Lawrence Inquiry Report recommended the adoption of strategies to prevent and address racism in schools, including monitoring of racist incidents and ethnic monitoring of school exclusions. ECRI understands that the British authorities are working to provide training for teacher to help them handle racist incidents and to ensure that all schools have anti-bullying policies and can deal effectively with racial harassment. ECRI also notes that ethnic monitoring of school exclusions is being carried out and that Local Education Authorities with the highest rates of Black exclusion are being requested to draw up action plans to tackle this problem. ECRI encourages the

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<sup>10</sup> *The Northern Ireland Act came into force on 19 December 1998 and gives legal effect to the "Good Friday Agreement", which establishes a range of measures to enhance protection of human rights in Northern Ireland, including the establishment of a new independent Northern Ireland Human Rights Commission (NIHRC).*

British authorities to provide assistance with, and monitor, the preparation and implementation of such plans.

31. Concerning achievement, ECRI is aware of considerable variations in achievement both within and between ethnic groups. It stresses the importance of providing equality of opportunity for all ethnic groups and for taking special measures where necessary to ensuring this. In particular, ECRI encourages ethnic monitoring of the levels of attainment of pupils in all schools and the setting of attainment targets in this respect.
32. In its first report, ECRI noted the decreasing number of specialist teachers of English as an additional language. ECRI urges the British authorities to ensure that the educational needs of children of non-English mother tongue attending British schools are adequately met.
33. ECRI also notes the under-representation of ethnic minority teaching staff and welcomes the setting of targets to increase the proportion of ethnic minority entrants to teacher training. ECRI encourages the British authorities to work towards the retention of members of ethnic minority in the teaching profession.

## **I. Employment**

34. Official figures and labour force surveys indicate that unemployment rates in the United Kingdom are generally higher amongst the ethnic minority population. The extent of this difference, however, varies considerably as between different ethnic minority groups and according to age and gender and length of residence. The rates for some groups are over twice as high for ethnic minority men and women generally, but the gap between majority unemployment rates and those of certain minority groups is particularly wide among young people.
35. Initiatives undertaken to bridge this gap include the New Deal scheme, which aims at helping unemployed people aged 18-24 who have been claiming unemployment benefits for a certain period of time to move from welfare into work and to improve their long-term employability. ECRI urges the British authorities to monitor the participation and performance of ethnic minority beneficiaries of this scheme and to address any problems which may arise in this respect.
36. Although the reasons explaining the different employment rates between the majority and minority population are complex, it is generally acknowledged that discrimination plays an important role in this respect, even though the forms this takes may be less overt and direct than in the past. As far as legal means to counter this phenomenon are concerned, in its first report, ECRI noted the low rate of success in employment cases dealing with discrimination and suggested that this could be due to a lack of expertise of the industrial tribunals, which deal with all kinds of employment cases and not only with racial discrimination ones. In this respect, ECRI reiterates that the establishment of a discrimination division – possibly dealing both with sex and race employment discrimination cases – within the industrial tribunal system could be subject to further consideration. However, it has been noted that lack

of professional legal representation could be an even more important factor in the low success rate. In this respect, ECRI notes that while legal aid is available for assistance with case preparation prior to the lodging of a case, it is not available for representation and assistance after a discrimination case begins before the Industrial Tribunals. However, the majority of race discrimination cases in the United Kingdom are made before Employment Tribunals. Since research suggests that the success rate is significantly higher for applicants who are represented, ECRI considers that legal aid for at least the most complex cases of racial discrimination in employment should be available.

37. As a further tool to counter discrimination, ECRI attaches importance to the adoption of equal opportunity policies by employers. In this respect, ECRI reiterates its support for the introduction of compulsory ethnic monitoring of the workforce for employers, at least of a certain size, as a key step to ensuring that equal opportunities policies are being properly and effectively applied.
38. ECRI welcomes the introduction of race equality employment targets, including recruitment, retention and career progression, in certain parts of the public sector. ECRI encourages the British authorities to extend such initiatives to other parts of the public sector. Particular attention should be devoted to adequate representation of members of ethnic minorities in senior positions. ECRI furthermore feels that, in addition to representation in functions connected with race relations issues, it should be a firm objective that ethnic minorities are adequately represented all across the range of functions.

## **J. Vulnerable groups**

### **- *Jewish community***

39. Although the Jewish community does not appear to experience the same levels of discrimination as other, more visible, ethnic groups, the occurrence of antisemitic incidents and the circulation of antisemitic literature, particularly via the Internet, are still a cause for concern. As concerns this last aspect, as mentioned above, ECRI urges the British authorities to monitor the effectiveness of the criminal law provisions prohibiting incitement to racial hatred.

### **- *Roma/Gypsies and Travellers***

40. As in most other European countries, Roma/Gypsies and Travellers in the United Kingdom suffer from discrimination and disadvantage in vital areas such as education, employment and housing. As concerns education, ECRI urges the authorities to ensure that public funds targeted to improve educational levels of ethnic minorities make adequate provision for Roma/Gypsy and Traveller children as well. ECRI furthermore encourages the authorities to ensure that Local Education Authorities include Roma/Gypsy and Traveller children in their attainment targets, develop specific strategies for raising achievement of Roma/Gypsy and Traveller children, and ensure admission and attendance of such children to their schools. ECRI also expresses concern at reports of forced

evictions of Roma/Gypsy families from illegal sites. ECRI understands that the British authorities are taking steps to remedy this situation. To the extent that such evictions reflect a shortage of legal camps, ECRI urges the British authorities to ensure that local authorities make adequate provision of camp sites throughout the country.

41. As will be mentioned below, ECRI stresses that the current negative imagery concerning asylum seekers and particularly Roma/Gypsies from Eastern Europe, run counter to efforts to promote mutual integration between the majority and the Roma/Gypsy population living in the United Kingdom.

- ***Religious groups***

42. ECRI is concerned at the lack of legal protection against religious discrimination in Great Britain, although such protection exists in Northern Ireland<sup>11</sup>. As noted in its first report, although this situation affects all communities whose defining features are perceived to be primarily or wholly connected with religious observance and belief, it is of particular concern for the Muslim community, especially in consideration of the climate of intolerance and prejudice to which such community is often subject. In this respect, ECRI draws the attention of the British authorities to its General Policy Recommendation N° 5 on combating intolerance and discrimination against Muslims.
43. Currently, members of religious communities may enjoy legal protection against discrimination inasmuch as they are deemed by the courts to constitute a "racial group" under the Public Order Act (POA) and the Race Relations Act (RRA). Whilst the courts have not, to date, developed much case law under the POA, a number of cases have arisen in civil law under the RRA. As the civil law currently stands, Jews and Sikhs are considered as "racial groups" under the RRA, but, for example, Muslims, Christians or Buddhists are not. ECRI understands that the British Government has commissioned research to assess the current scale and nature of religious discrimination and the extent to which it overlaps with racial discrimination to produce a basis for reaching conclusions on any necessary action. ECRI believes that, although an effective fight against religious discrimination requires a wide range of policy responses, legislation is necessary both as an effective tool to address concrete cases of religious discrimination and as an awareness raising measure. ECRI understands that the adoption of legislation in this field could either take the form of an extension of the RRA to cover religious discrimination, at least in certain areas, or of separate legislation. As concerns the offences contained in the POA and the Crime and Disorder Act, however, ECRI considers that protection could be extended to religion in addition to race.
44. ECRI furthermore reiterates its call for reform of the blasphemy law in order to make it non-discriminatory, either by abolishing it or by extending it to the other religions.

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<sup>11</sup> See below, Northern Ireland (para. 56).

## **K. Conduct of law enforcement officials**

45. The use of stop and search powers was identified by the Stephen Lawrence Inquiry Report as a key issue in relations between the police and minority ethnic communities. As noted by ECRI in its first report, a disproportionate number of people belonging to minority groups are subjected to such controls. ECRI notes that the implementation of the recommendations contained in the Stephen Lawrence Inquiry Report in this area, including making records of all stops/searches and giving a record to the person stopped, is being assessed through pilot projects and other research. ECRI encourages the British authorities to monitor the impact of these measures on the use of stop/search powers *vis-à-vis* members of ethnic minorities.
46. Concern has been voiced regarding the backlash effect of the Stephen Lawrence Inquiry Report on the police, notably among its rank and file officers. In order to maximise the effectiveness of all anti-racist policies, ECRI urges the British authorities to take all possible measures to ensure that such policies are thoroughly explained to rank and file officers.
47. In its first report, ECRI expressed concern at the disproportionate representation of ethnic minorities in deaths in custody. Concerns have been voiced that the procedures in place to investigate deaths in custody are not always effective. ECRI supports the idea of a public inquiry to look into the issue of deaths in custody and, in line with what has been said above<sup>12</sup>, urges the British authorities to specifically address, in this framework, the issue of over-representation of ethnic minorities in deaths in custody.
48. As recommended by the Stephen Lawrence Inquiry Report, ECRI strongly supports the establishment of an independent mechanism to investigate serious complaints of misbehaviour committed by police officers. ECRI understands that the British authorities have decided to establish a complaints mechanism with elements of independent investigation. Although details are not available to it, ECRI welcomes this development and urges the British authorities to ensure that complaints of discriminatory and racist behaviour on the part of the police are subject to scrutiny by such independent complaints system.
49. Concerning training, ECRI notes that, in January 1999, a new strategy came into effect for the provision of independent expert support to the police service in community and race relations training. ECRI stresses the need to ensure that all training in race relations issues include strategies to place such principles firmly within operational policing and the need to evaluate the effectiveness of such training.
50. ECRI welcomes the setting of targets for recruitment, retention and promotion of ethnic minority police officers. As mentioned above<sup>13</sup>, ECRI considers that particular attention should be devoted to adequate representation of members of ethnic minorities in senior positions and to strategies aimed at retaining ethnic minority officers in the police force.

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<sup>12</sup> *Administration of justice (para. 23).*

<sup>13</sup> *Employment (para. 38).*

## **L. Media**

51. As mentioned in other parts of this report<sup>14</sup>, ECRI is concerned at the appearance of racist or racially inflammatory material in the printed media and on the Internet.
52. As concerns the printed media, particular concern is expressed at the consistent inflammatory attacks on asylum seekers and migrants coming to the United Kingdom, which have appeared in local but also in some national mainstream newspapers. The Code of Practice of the newspaper and periodical industry, whose enforcement is carried out by the Press Complaints Commission, contains rules against discrimination. However, these rules concern the need to avoid prejudicial, pejorative or unnecessary reference to, *inter alia*, a person's race, colour or religion and are therefore ill-suited to countering the publication of articles containing general racist assumptions and stereotypes against particular groups of persons. As mentioned above<sup>15</sup>, ECRI urges the British authorities to keep the effectiveness of the existing legal provisions prohibiting incitement to racial hatred under review. ECRI also encourages the promotion of positive publications on ethnic minorities, asylum seekers and immigrants.
53. As concerns the Internet, in its first report, ECRI highlighted the European-wide problem of the spread of racist, xenophobic and especially antisemitic material. Internet Service providers which knowingly fail to remove illegal material on their services are liable to prosecution in the United Kingdom. ECRI urges the British authorities to ensure that due attention is devoted to identification, and prosecution of the authors of, material which is in breach of existing laws against incitement to racial hatred.

## **M. Northern Ireland**

54. A recent report on attitudes towards race relations and racial prejudice in Northern Ireland indicates that negative racial attitudes among people living in the region are far from unimportant<sup>16</sup>.
55. ECRI urges the authorities to take measures aimed at raising the awareness of the whole population of the existence of racial prejudice, its dangers and the need to challenge it. Although all minority communities present in Northern Ireland are vulnerable to racial prejudice and harassment, a particular concern is expressed at the situation of the Traveller community.

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<sup>14</sup> See *Criminal law provisions (para. 11), Vulnerable groups (paras. 39 and 41) and Effect of changes in immigration and asylum policies on the situation and the public perception of asylum seekers, refugees and minority groups (para.58)*.

<sup>15</sup> *Criminal law provisions (para. 11)*.

<sup>16</sup> *Racial Attitudes and Prejudice in Northern Ireland, P. Connolly, M. Keenan, Northern Ireland Statistics and research Agency*.

56. ECRI has noted the introduction in Northern Ireland of a statutory obligation on public authorities to promote equality of opportunity and good relations between groups of people of different racial or religious background<sup>17</sup>. ECRI also notes that, as suggested in its first report, legal protection against religious discrimination was extended in 1999 to areas other than employment (i.e. provision of goods, facilities, services and the disposal or management of premises). However, ECRI expresses concern at the non-application in Northern Ireland of certain criminal provisions relevant in the field of combating racism and intolerance -- such as the Crime and Disorder Act (1998) -- which are applicable in Great Britain<sup>18</sup>. ECRI also considers that the Race Relations (Northern Ireland) Order should be amended to take into account the new elements introduced by the Race relations (Amendment) Bill<sup>19</sup>.

## **SECTION II: ISSUES OF PARTICULAR CONCERN**

57. 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 the United Kingdom, ECRI would like to draw attention to the effect of changes in immigration and asylum policies on the situation and the public perception of asylum seekers, refugees and minority groups.

### **N. Effect of changes in immigration and asylum policies on the situation and the public perception of asylum seekers, refugees and minority groups**

58. ECRI is concerned at the general negative climate concerning asylum seekers and refugees in the United Kingdom. Opinion polls suggest that asylum and immigration issues feature increasingly high in the list of concerns of the British electorate. As mentioned above, the printed media particularly contribute to creating such climate. However, ECRI considers that the frequent changes in immigration and asylum policies designed to increasingly deter these categories of persons from coming to the United Kingdom have played a fundamental role in this respect. The tone of the public debate on issues of asylum and immigration generated by such changes in recent years has also had a central role in this respect. ECRI notes that, regrettably, many politicians have contributed to or at least not adequately prevented, public debate taking on an increasingly intolerant line with at times racist and xenophobic overtones. Public statements have tended to depict asylum seekers and "economic migrants", explicitly or by inference, as a threat to security, economic stability and social peace.

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<sup>17</sup> See *Civil and administrative law provisions (para. 21)*.

<sup>18</sup> See *Criminal law provisions (para. 8)*.

<sup>19</sup> See *Civil and administrative law provisions (paras. 15-19 and para. 21)*.

59. Episodes of racial attacks and harassment against asylum seekers, notably Roma/Gypsies, demonstrate, in ECRI's opinion, some of the dangers which the increasingly negative climate of opinion can bring about. Apart from the problem of the occurrence of concrete manifestations of violence or intolerance, however, ECRI considers that it is unacceptable for politicians to direct the general public's feelings of insecurity on one specific group of persons, irrespective of whether these persons have a valid claim to remain in the country or not. In this respect, ECRI strongly believes that politicians should not only avoid promoting the general assumption that most asylum claimants are not genuine, but also the vilification of those who are considered by the authorities not to have valid asylum claims and are sometimes defined as "economic migrants" "economic refugees" or "bogus asylum-seekers".
60. ECRI has noted in various parts of this report the efforts undertaken by the British Government to improve race relations among people living in the United Kingdom. However, ECRI is of the opinion that the adoption of increasingly restrictive measures in the fields of asylum and immigration and the tone of the debate around the adoption of such measures run counter to these efforts and to the development of a genuine culture of tolerance and respect for difference.
61. Since the preparation of ECRI's first report, a new Immigration and Asylum Act (1999) was adopted in November 1999. In its first report, following the withdrawal of benefits from the vast majority of asylum seekers, ECRI expressed concern at their situation and encouraged the British Government to provide alternative arrangements. The Immigration and Asylum Act (1999) creates a new system of support for people seeking asylum, separate from the benefits system. Provided they meet the destitution criteria, asylum seekers and their dependants are awarded accommodation on a no-choice basis. In addition, they are entitled to a support package equivalent to 70% of income support rates, 10% of which will be paid in cash, and the rest in vouchers. Asylum seekers can also apply for a "support only" package if they have somewhere to stay. Some organisations working with refugees have stressed that it is degrading and stigmatising for people to be forced to queue for food parcels and present food vouchers at supermarket checkouts. Although only about 40% of asylum seekers are currently affiliated to the new system, concern has also been voiced that asylum seekers are being offered accommodation in areas of the country where there are no other members of their community of origin or where refugee support organisation are not well established. It has also been noted that, while this new *régime* has been conceived as a short-term measure pending the assessment of asylum seekers' claims, the time currently required for a first decision can be quite long, even if it is the British Government's declared aim to reach a first decision on asylum cases in six months. ECRI urges the British authorities to take these concerns into account. More generally, however, ECRI is concerned that these measures have been adopted, and presented, as a means to make the United Kingdom a less attractive destination for "economic migrants", with obvious negative repercussions on the general climate of opinion concerning this group of persons. In the same spirit, ECRI is also concerned that, instead of stressing the positive responsibility of local authorities for asylum seekers, measures aimed at the geographical dispersion of this group of persons have been presented as a means to "share the burden" of asylum-seekers among local communities.

62. In its first report, ECRI expressed a particular concern in relation to Section 8 of the previous (1996) Immigration and Asylum Act, which made it a criminal offence for employers to take on employees whose immigration status prevented them from working in the United Kingdom. ECRI noted that there was a risk that this provision could lead to the development of a perception that employment of any person who might be an "immigrant" is *per se* problematic and therefore to an increased likelihood of racial discrimination at point of recruitment. ECRI furthermore emphasised the role that similar provisions can play in reinforcing attitudes of hostility and suspicion towards members of minority groups. Although recognising potential abuse, the British authorities maintain that this provision is a useful tool against unscrupulous and exploitative employers. To avoid abuse and malpractice, the Immigration and Asylum Act (1999) includes a proposal for a statutory Code of Practice to provide guidance to employers in the avoidance of racial discrimination when securing the defence under Section 8. While welcoming the Code of Practice, ECRI reiterates here the concerns expressed in its first report.
63. ECRI is also concerned at the use of detention for asylum-seekers in the United Kingdom. Although most detained asylum seekers are not charged with any criminal offence, many are reportedly held in prisons. The Immigration and Asylum Act (1999) introduces some improvement in this respect. However, refugee organisations complain that, at present, asylum seekers can be detained at any time, for any reason and with no time limits. ECRI stresses that asylum seekers, even if their claims are not considered to be valid by the authorities, should not be treated as criminals and that any measures taken with regard to such persons should reflect this approach.
64. The Immigration and Asylum Act (1999) also provides for the extension of the powers of immigration officers to enter premises, search and arrest people suspected of immigration offences. These powers may be used in some cases without a warrant, and sometimes without the approval of a senior immigration officer. ECRI is aware that the immigration officers are bound by the legal safeguards within the Police and Criminal Evidence Act and the relative codes of practice. However, there have been reports of discriminatory behaviour among officials responsible for immigration control at borders and within the country. Alleged victims of unlawful racial discrimination have a legal right of action, either as part of the immigration and asylum appeal system if the issue relates to an immigration decision, or direct to the county courts if the complaint is about the behaviour of immigration officials. However, ECRI urges the British authorities to ensure that all complaints made against the Immigration Service, and notably those concerning discriminatory or racist behaviour, are subject to independent and effective scrutiny. It furthermore urges the authorities to provide immigration officers with specialist training to ensure that their work, including under the new powers, is carried out in a manner which is non discriminatory and respectful of human rights. These measures appear to be all the more necessary since, as mentioned above<sup>20</sup>, the actions of officials operating within immigration or nationality laws or rules will be exempted from the prohibition against discrimination on certain grounds under the Race Relations Act.

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<sup>20</sup> *Civil and administrative provisions (para. 19).*

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