

# Third report on the United Kingdom

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## **Foreword**

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

*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.*

*The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4-5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.*

*The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.*

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

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

***The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 17 December 2004 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.***

### ***Executive summary***

Since the publication of ECRI's second report on the United Kingdom, progress has been made in a number of areas. The legal framework against racism and racial discrimination has been strengthened. An important element of this framework, the statutory duty on public authorities to promote equality has been in force and implemented for over three years. Emphasis has increasingly been put on the achievement of concrete outcomes for ethnic minorities and specific equality targets for these groups of persons have been set across the public sector. Monitoring of the situation of different ethnic groups across a wide range of areas has facilitated the identification of priority areas for action and the elaboration of targeted policies. A strategy has been launched to promote community cohesion and race equality throughout Great Britain. Citizenship education has been introduced in secondary schools in order to better reflect the needs of a multicultural school population. Work is underway to establish a support mechanism to raise the awareness of the general public of their rights under the Human Rights Act and to advise and assist individuals.

However, a number of recommendations made in ECRI's second report have not been implemented or have only been partially implemented. In spite of initiatives taken, members of ethnic and religious minority groups continue to experience racism and discrimination. Asylum seekers and refugees are particularly vulnerable to these phenomena, partly as a result of changes in asylum policies and of the tone of the debate around the adoption of such changes. Members of the Muslim communities also experience prejudice and discrimination, especially in connection with the implementation of legislation and policies against terrorism. Continuing high levels of hostility, discrimination and disadvantage of Roma/Gypsies and Travellers are also a cause for concern to ECRI. The media has continued to play an important role in determining the current climate of hostility towards asylum seekers, refugees, Muslims, Roma/Gypsies and Travellers. Although it is in part the result of better reporting and recording techniques, the number of racist incidents is high. The disproportionate impact of criminal justice functions on ethnic minorities has continued to increase.

In this report, ECRI recommends that the authorities of the United Kingdom take further action in a number of areas. These areas include the need to ratify Protocol No. 12 to the European Convention on Human Rights, which lays down a general prohibition of discrimination, and the need to adopt a consolidated equality act that would eliminate current discrepancies in the levels of protection of individuals against discrimination. ECRI recommends that the authorities take the lead in promoting a debate on asylum issues that is balanced and that reflects the human rights dimension of these issues. It also recommends that the authorities of the United Kingdom review their legislation against terrorism in order to eliminate discrimination in its provisions and in its implementation and that they assess the impact of legislation and policies against terrorism on race relations. ECRI also recommends a series of measures to address the situation of disadvantage and discrimination faced by the Roma/Gypsy and Traveller communities.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON THE UNITED KINGDOM

### International legal Instruments

1. In its second report, ECRI recommended that the United Kingdom ratify the European Social Charter (Revised), the European Charter for Regional or Minority Languages and the Convention on the Participation of Foreigners in Public Life at Local Level. It also recommended that the United Kingdom sign and ratify the European Convention on Nationality and the European Convention on the Legal Status of Migrant Workers. ECRI further recommended that the United Kingdom make the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), whereby individuals and groups of individuals can file petitions before the Committee for the Elimination of Racial Discrimination and ratify the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which provides for the right of individual petition.
2. ECRI is pleased to note that the United Kingdom ratified the European Charter for Regional or Minority Languages in March 2001. The authorities of the United Kingdom report that the question of the ratification of the European Social Charter (Revised) is being kept under review. They also report that they intend to ratify the Convention on the Participation of Foreigners in Public Life at Local Level. However, the provisions contained in Chapter C of this instrument, which concern the attribution of eligibility and voting rights to foreign residents, will not be applied. Work is reported to be underway to complete the process of adapting the domestic legal system to enable ratification of the European Convention on Nationality. ECRI notes that the authorities of the United Kingdom do not intend to sign the European Convention on the Legal Status of Migrant Workers and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI also notes that the United Kingdom has not made the declaration under Article 14 of the ICERD nor has it ratified the Optional Protocol to the ICCPR.
3. ECRI notes that the United Kingdom has not signed Protocol No. 12 to the European Convention on Human Rights (ECHR), which provides for a general prohibition of discrimination. The authorities have stated that they do not intend to ratify the Protocol before it has entered into force and its scope has been clarified through the case law of the European Court of Human Rights. ECRI also notes that the United Kingdom has not signed the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, and that it has no plans to do so for the moment.

### **Recommendations:**

4. ECRI recommends that the authorities of the United Kingdom sign and ratify Protocol No. 12 to the ECHR. It also recommends that they ratify as soon as possible the European Convention on Nationality and the European Social Charter (Revised). ECRI recommends that the authorities of the United Kingdom ratify the Convention on the Participation of Foreigners in Public Life at Local Level and that they apply the provisions contained in Chapters A, B and C of this instrument. ECRI furthermore recommends that the authorities of the United Kingdom sign and ratify the Additional Protocol to the Convention on Cybercrime, the European

Convention on the Legal Status of Migrant Workers and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI finally recommends that the authorities of the United Kingdom accept Article 14 of the ICERD and ratify the Optional Protocol to the ICCPR.

### **Constitutional provisions and other basic provisions**

5. In its second report, ECRI noted that the Human Rights Act, which gave the rights and freedoms set out in the ECHR further effect in the United Kingdom's domestic legal system, did not provide a general superseding guarantee against discrimination. It therefore recommended that the authorities consider ways in which this could be achieved. ECRI notes that there is strong support among the non-governmental sector for ratification by the United Kingdom of Protocol No. 12 to the ECHR and for its incorporation into the domestic legal system, as a way of ensuring that the right to be free from discrimination be placed at a higher level in the United Kingdom's domestic legal order.
6. The Human Rights Act has been implemented in the United Kingdom since October 2000. Although it is reported that members of the public in the United Kingdom are increasingly aware of their rights under the Act, ECRI notes that at present there is no support mechanism to assist individuals by raising their awareness of these rights and provide advice or representation. ECRI is pleased to note that the government has announced that it plans to establish a Commission for Equality and Human Rights<sup>1</sup>. ECRI understands, however, that the Commission, as envisaged at present, will not be empowered to assist individuals in pursuing complaints of human rights violations.

### ***Recommendations:***

7. ECRI recommends that the authorities of the United Kingdom consider ways of placing the right to be free from discrimination at a higher level in the domestic legal order.
8. ECRI encourages the authorities of the United Kingdom in their efforts to establish a support mechanism aimed at raising the general public's awareness of their rights under the Human Rights Act and at providing advice and assistance to individuals. It recommends that such assistance include assistance in pursuing individual complaints of human rights violations.

### **- *Citizenship legislation***

9. Since ECRI's second report, the United Kingdom has introduced new legislation in the field of naturalisation. The Nationality, Immigration and Asylum Act 2002 (hereafter: NIAA) requires all those applying for citizenship of the United Kingdom to demonstrate sufficient knowledge of English -- a requirement implemented since the end of June 2004 -- and knowledge of life in the United Kingdom -- a requirement which has not yet been implemented. In addition, citizenship ceremonies were introduced in January 2004. The authorities of the United Kingdom report that the proportion of unsuccessful applications for naturalisation is between 5 and 10 % of the total number of applications submitted every year (approximately 120,000). They have stated that no

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<sup>1</sup> See below, Specialised bodies and other institutions.

significant changes in the total number of applications or in the refusal rate have been registered since the entry into force of the NIAA.

**Recommendations:**

10. ECRI recommends that the authorities of the United Kingdom keep the implementation of the citizenship requirements under close review in order to address any possible patterns of excessively restrictive application or of direct or indirect discrimination on grounds of race, colour, language, religion, nationality and national or ethnic origin.

**Criminal law provisions**

- **Racially aggravated offences**

11. In its second report, ECRI recommended that the authorities of the United Kingdom continue to work to improve reporting and recording of racist incidents<sup>2</sup>. ECRI notes that a number of initiatives have been taken in this field, including the publication of a Code of Practice on the reporting and recording of racist incidents, which sets out ways in which comprehensive reporting and recording systems can be put in place at local level.
12. In its second report, ECRI also recommended that the authorities monitor the implementation of the provisions introduced by the Crime and Disorder Act 1998 throughout the various stages of the criminal procedure<sup>3</sup>. ECRI notes that the Crown Prosecution Service (hereafter: CPS) compiles reports monitoring racist incidents which contain information on decisions by the prosecuting authorities in all cases identified by the police or CPS as racist incidents. ECRI notes that, in the year 2002/2003, the number of defendants dealt with by the CPS for racially motivated crime rose by 12.4%. This latest increase follows a 20% increase from the year 2000/2001. At the same time, ECRI notes that during the year 2002/2003, the number of racist incidents recorded by the police fell by 11% to 48,525 and that racially aggravated offences recorded by the police remained more or less stable (31,034). Non-governmental organisations have registered progress in the reporting, recording and prosecution of racially and religiously aggravated offences -- since ECRI's second report, legal provisions have been introduced against religiously aggravated offences in the Anti-Terrorism, Crime and Security Act 2001 (hereafter: ATCSA). Some concern has been expressed, however, that convictions do not always reflect the number and gravity of the offences committed. In this respect, ECRI notes that since October 2003, the Attorney General has been given powers to refer certain cases involving racially or religiously aggravated offences to the Court of Appeal where, in his opinion, the sentences handed down have been unduly lenient.

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<sup>2</sup> Following a recommendation of the Stephen Lawrence Inquiry Report in this sense, the police, the Crown Prosecution Service and all other criminal agencies have adopted a definition of a racist incident, which states that "a racist incident is any incident which is perceived to be racist by the victim or any other person".

<sup>3</sup> The Crime and Disorder Act 1998, which has been in force since September 1998, created new offences of racially aggravated violence and harassment and gave statutory force to the case-law which required judges to consider evidence of racist motivation for any offence as an aggravating factor in sentencing.

**Recommendations:**

13. ECRI encourages the authorities of the United Kingdom in their efforts to improve the methods by which racist incidents are reported and recorded and to monitor the implementation of the provisions against racially and religiously aggravated offences. ECRI recommends that the authorities of the United Kingdom continue to raise the awareness of the courts of the need to ensure that all racially or religiously aggravated offences are duly punished and that the sentences handed down adequately reflect the gravity of the offences.

- **Incitement to racial hatred**

14. In its second report, ECRI recommended that the authorities of the United Kingdom keep the effectiveness of the provisions against incitement to racial hatred, contained in Part III of the Public Order Act 1986 (hereafter: POA), under review. Since ECRI's second report, the maximum penalty for incitement to racial hatred under the POA was increased by the ATCSA from two to seven years' imprisonment. In addition, the authorities of the United Kingdom have taken measures aimed at enforcing these provisions more effectively. These measures include the establishment within the Metropolitan police of a central advice point for all police forces in England and Wales in relation to possible offences of incitement to racial hatred, and the examination of all cases referred to the CPS by a specialised team within it. Although some sentences, including one sentence to seven years' imprisonment, have been handed down, many organisations have expressed concern to ECRI about the fact that the provisions against incitement to racial hatred are rarely applied<sup>4</sup>. Concern has also been expressed about the very restrictive manner in which these provisions are interpreted.

**Recommendations:**

15. ECRI recommends that the authorities of the United Kingdom keep the effectiveness of existing legislation in force against racist expression under review. In this respect, it draws the attention of the authorities to its General Policy Recommendation No. 7<sup>5</sup>, which contains a list of acts which, according to ECRI, should be penalised under national legislation. ECRI stresses in particular its recommendation that these acts include "the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin". Furthermore, ECRI reiterates the recommendation it formulated in its second report, that consideration be given to replacing the requirement to have the consent of the Attorney General for prosecution of offences under Part III of the POA with the requirement to have the consent of the Director of Public Prosecutions.

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<sup>4</sup> Since 1996, there have been 61 prosecutions and 42 convictions in England and Wales, while a first sentence was recently handed down in Scotland and is presently being appealed.

<sup>5</sup> CRI (2003) 8: ECRI General Policy Recommendation N°7: National legislation to combat racism and racial discrimination.

16. Part III of the POA provides protection against incitement to racial hatred only. Thus, at present, the POA provides protection only to those religious groups which, according to the case-law, constitute “racial groups”<sup>6</sup>. Against this background, in its second report, ECRI recommended that the provisions against incitement to racial hatred be extended to cover incitement to hatred against religious groups. ECRI is pleased to note that the government has recently announced plans to introduce legislation to this effect.

**Recommendations:**

17. ECRI recommends that the authorities of the United Kingdom swiftly enact legislation prohibiting incitement to hatred against religious groups.
18. In its second report, ECRI recommended that the United Kingdom reform its blasphemy law, which currently offers protection only to the Church of England, either by abolishing it or by extending it to cover other religions in order to avoid discrimination. The authorities of the United Kingdom have indicated that they will keep the position on the blasphemy law under review, particularly as the benefits of the new provisions against incitement to religious hatred are realised.

**Recommendations:**

19. ECRI reiterates its recommendation to the authorities of the United Kingdom that they reform the blasphemy law, in order to ensure that it does not discriminate between religions.

- **Scotland and Northern Ireland**

20. In Scotland, there are provisions against racially aggravated behaviour. Since the entry into force of the Criminal Justice (Scotland) Act 2003 in June 2003, religiously aggravated offences are also prohibited. Provisions also exist to prohibit incitement to racial hatred. However, as in England and Wales, these provisions do not cover incitement to hatred against religious groups.
21. In its second report, ECRI expressed concern at the absence of provisions against racially aggravated behaviour in Northern Ireland. ECRI is pleased to note that the Criminal Justice (No. 2) (Northern Ireland) Order 2004 introduced provisions whereby racial or religious motivation is to be considered an aggravating circumstance in sentencing.

**Recommendations:**

22. ECRI recommends that legislation prohibiting incitement to hatred against religious groups be enacted in Scotland. It also recommends that extensive training be provided to all those working in the criminal justice system in Northern Ireland on the newly-introduced provisions against racially or religiously aggravated behaviour.

<sup>6</sup> See below, Vulnerable groups – Religious groups.

## Civil and administrative law provisions

23. In its second report, ECRI expressed its hope that the Race Relations (Amendment) Bill would be swiftly adopted. Shortly after the preparation of ECRI's second report, the Race Relations (Amendment) Act 2000 (hereafter: RRAA), brought within the scope of the Race Relations Act (1976) important functions of public authorities, including the police. The RRAA also introduced a positive duty on specified public authorities to have due regard to the need to eliminate discrimination, promote equal opportunities and encourage good race relations in carrying out their functions.
24. Since ECRI's second report, the United Kingdom's race relations and employment equality legislation were further amended in 2003 by Regulations<sup>7</sup> through which the United Kingdom transposed the European Council Directives 2000/43/EC and 2000/78/EC<sup>8</sup>. Non-governmental organisations have consistently expressed concern that as a result of the decision of the government to implement the Directives by way of introducing the minimum possible changes, the antidiscrimination legislation is, as it currently stands, very incoherent and confusing. One illustration of this appears to be the different levels of protection currently available against discrimination on grounds of racial and ethnic origin on the one hand, compared to discrimination on grounds of nationality or colour on the other<sup>9</sup>. Additional inconsistencies are reported to come from the fact that the changes introduced by the Regulations only apply to those areas that are covered by the EU Directives, although in some cases pre-existing antidiscrimination provisions cover wider areas<sup>10</sup>. More generally, ECRI has registered a strong support from the non-governmental sector for a comprehensive review of the antidiscrimination provisions in force and for the adoption of a single equality act covering discrimination on all grounds, which would eliminate current discrepancies in the levels of protection of individuals against discrimination and constitute a more easily manageable tool for the general public and for legal practitioners and law enforcement agencies alike.

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<sup>7</sup> In Great Britain: Race Relations Act 1976 (Amendment) Regulations 2003 (entered into force on 19 July 2003), the Employment Equality (Sexual Orientation) Regulations 2003 (entered into force on 1st December 2003) and the Employment Equality (Religion or Belief) Regulations 2003 (entered into force on 2nd December 2003). Separate regulations were adopted in Northern Ireland.

<sup>8</sup> Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; and Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

<sup>9</sup> Since the EU Directive 2000/43/EC covers discrimination on grounds of racial or ethnic origin only, most of the changes introduced by the Regulations only apply to cases of discrimination on these grounds and not to cases of discrimination on grounds of colour or nationality, which are, however, covered by the RRA. As a result, for instance, the new definitions of indirect discrimination, genuine occupational requirement and the new provisions on the burden of proof only apply to discrimination on grounds of racial or ethnic origin, whereas the original provisions of the RRA continue to apply to discrimination on grounds of colour and nationality.

<sup>10</sup> For instance, the new changes introduced by the Regulations do not deal with all claims of discrimination by public authorities, but only those claims which also fall within the scope of the Directive 2000/43/EC.

### **Recommendations:**

25. ECRI recommends that the authorities of the United Kingdom swiftly undertake a review of the antidiscrimination provisions in force in order to prepare a consolidated act which provides equal protection to individuals against discrimination on grounds such as race, colour, language, religion, nationality and national or ethnic origin. It strongly recommends that, in this process, the authorities take into account ECRI's General Policy Recommendation No. 7, which contains detailed guidance on the key elements of effective national legislation against discrimination on these grounds.
26. In its second report, ECRI recommended that the obligations incumbent on public authorities placed under the duty to eliminate racial discrimination, promote equal opportunities and encourage good race relations be spelled out as clearly as possible in the law. It also recommended that the authorities of the United Kingdom ensure that adequate mechanisms to monitor compliance with and to enforce this duty are put in place.
27. In addition to placing most public authorities under a general duty to eliminate racial discrimination, promote equal opportunities and encourage good race relations, the RRAA places many public authorities under so-called specific duties, by which public authorities can, in fact, meet the general duty. The specific duties mainly include the preparation of race equality schemes which set out plans for delivering race equality in external and internal work<sup>11</sup>. The race equality scheme is a public document and public bodies are answerable to the public for delivering the programme set out in the scheme. In addition, all public authorities bound by the general duty must monitor their staff and applicants for jobs, promotion and training by ethnic group and publish the results every year<sup>12</sup>. Some concern has been expressed that the duties incumbent on public authorities have tended to focus excessively on arrangements and processes aimed at advancing race equality rather than on actual race equality outcomes.
28. As concerns monitoring and enforcement mechanisms, the Commission for Racial Equality<sup>13</sup> (hereafter: CRE) has been given a central role in monitoring the way public authorities fulfil their general and specific duties. ECRI notes, for instance, that the CRE has produced a statutory code of practice providing details on each legal requirement under the duties as well as accompanying non-statutory guides. As recommended by ECRI in its second report, the CRE has also been empowered to serve compliance notices to public authorities who have failed to fulfil their duties and to apply to courts for orders of compliance with such notices in certain circumstances. ECRI also notes that, as part of the effort to link public authorities' duties and racial equality outcomes more closely, the CRE is also monitoring the implementation of the race equality duty, and that this has been reinforced by the Treasury's introduction of race equality

<sup>11</sup> Under the race equality scheme, public authorities must: assess and consult on the likely impact proposed policies will have on race equality; monitor policies for any adverse impact on race equality; publish the results of any consultation, monitoring or assessment; guarantee that the public have access to the information and services they provide; and train their staff in the general duty and in the specific duties.

<sup>12</sup> Authorities with at least 150 full-time staff must also monitor by ethnic background grievances, disciplinary action, performance appraisal, training and dismissals.

<sup>13</sup> See below, Specialised bodies and other institutions.

outcomes into Public Service Agreements<sup>14</sup>. ECRI notes that some research indicates that the implementation of the duty is rather patchy: while there are good examples of public authorities' compliance with the duties across all sectors, a number of authorities are lagging behind. In general, ECRI has noted that there is wide support within civil society for the public authorities' race equality duties, as a tool with good potential for bringing about lasting change, preventing racial discrimination and tackling inequalities. It has been pointed out, however, that, with over 43,000 public authorities being bound by the race equality duties, considerably more resources should be available to ensure monitoring and enforcement.

**Recommendations:**

29. ECRI encourages the authorities of the United Kingdom in their efforts to promote race equality and fight against racial discrimination through the public authorities' duty. In this respect, it recommends that the authorities ensure that adequate resources are available for the effective monitoring and enforcement of these duties. ECRI also recommends that the authorities of the United Kingdom take all necessary measures in order to ensuring a closer link between race equality duties and actual race equality outcomes. It furthermore recommends that the authorities of the United Kingdom consider extending the duty to other grounds, and notably religion, and to parts of the private sector.
30. As already noted in ECRI's second report, Section 75 of the Northern Ireland Act 1998 places public authorities under a statutory obligation to promote equality of opportunities and good relations between certain individuals and groups, including persons of different racial origin and persons of different religious beliefs. The Equality Commission for Northern Ireland (hereafter: ECNI)<sup>15</sup> monitors the implementation of the duties imposed by Section 75 and offers advice in this respect. ECRI notes that the ECNI's most recent Progress Report indicates that a number of authorities have made some progress. However, some non-governmental organisations report that much remains to be done to ensure that all public authorities adequately fulfil their obligations, especially in relation to race equality. The authorities of the United Kingdom have informed ECRI that a review of the operation of the Section 75 equality duty, including effective monitoring and enforcement mechanisms, is currently underway.

**Recommendations:**

31. ECRI recommends that the authorities of the United Kingdom keep the effectiveness of the Section 75 equality duty closely under review. In this respect, it recommends in particular that the authorities ensure that the duty to promote equality of opportunities and good relations between racial groups and persons of different religious beliefs does not receive less attention than other facets of the duty.

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<sup>14</sup> A Public Service Agreement sets out the aims, objectives and performance targets for each government department and is linked directly to its budget allocation. Through a Public Service Agreement, a direct link is therefore established between a department's funding and its performance in delivering service improvements and outcomes for customers.

<sup>15</sup> See below, Specialised bodies and other institutions.

## Administration of justice

32. In its second report, ECRI recommended that the authorities of the United Kingdom pay particular attention to interpreting the data collected through the ethnic monitoring of the criminal justice system and that they further extend ethnic monitoring to all stages of the judicial process.
33. Since ECRI's second report, ethnic monitoring of the criminal justice system has continued and a considerable amount of information is available on ethnic minorities' experiences of this system in areas such as "stop and searches", arrests, cautions, convictions, sentencing, imprisonment, and deaths in custody. The authorities of the United Kingdom recognise that more work is needed to analyse and understand this statistical information. To this end, they have established a Criminal Justice System – Race Unit which is housed in the Home Office and works across all criminal justice system departments and agencies with the aim of identifying barriers to equal treatment and ways of tackling them effectively. The authorities have also informed ECRI that a fundamental review of the statistics on race and the criminal justice system is being carried out to determine what statistics should be collected and how.

### **Recommendations:**

34. ECRI encourages the authorities of the United Kingdom in their efforts to monitor the ethnic minorities' experience of the criminal justice system. It recommends that any review of the current monitoring systems be instrumental to the collection of data that is accurate, informative and accessible. In this connection, ECRI recommends that the authorities consider extending the monitoring of the criminal justice system by collecting data broken down by religion.
35. In its second report, ECRI recommended that the UK authorities pay particular attention to researching and addressing the over-representation of members of ethnic minorities in the prison population, deaths in custody, and "stop and searches".
36. ECRI addresses the issues of deaths in custody and "stop and searches" in other parts of this report<sup>16</sup>. It notes that the Criminal Justice Unit is currently researching the area of sentencing to establish whether there is evidence of different sentencing between people in different ethnic minority and majority populations. As concerns prisons, ECRI notes that, in June 2002, ethnic minorities still accounted for about 22% of the male and 29% of the female prison population of England and Wales and that the disproportion between ethnic minority and other prisoners is reportedly growing. ECRI also notes that, following the results of a formal investigation by the CRE on racism in the prison service, the latter has committed itself to implementing an action plan to ensure race equality for both staff and prisoners. More generally, ECRI notes that, under its Public Service Agreement, the Home Office has introduced and strengthened targets relating to race equality and the criminal justice system. These targets include specific targets to be attained in the area of reducing the disproportionate impact of criminal justice functions on ethnic minorities.

<sup>16</sup> Conduct of law enforcement officials.

**Recommendations:**

37. ECRI encourages the authorities of the United Kingdom in their efforts to research and improve the manner in which the criminal justice system deals with ethnic minorities. In particular, it recommends that the authorities monitor the situation as concerns racism and racial discrimination in prisons.

- **Legal aid**

38. In its second report, ECRI recommended that legal aid be made available for representation and assistance in racial discrimination cases before Employment Tribunals. ECRI notes, however, that there is still no legal aid available for these cases, although since 2000 the alleged victim can apply for exceptional funding in certain circumstances. Given the complexity of discrimination cases, non-governmental organisations consider that lack of legal aid in such cases seriously affects the chances of victims of discrimination of having their situation redressed in Employment Tribunals. The need for publicly funded centres which provide legal assistance in racial discrimination cases has been highlighted.

**Recommendations:**

39. ECRI recommends that the authorities of the United Kingdom consider how to best ensure that legal aid is available in discrimination cases before Employment Tribunals.

**Specialised bodies and other institutions**

40. In its second report, ECRI noted that there were plans to establish a Human Rights Commission and stressed the need to ensure that such a new commission would not dilute the effectiveness of existing institutions. As mentioned above<sup>17</sup>, the government of the United Kingdom has announced plans to establish a Commission for Equality and Human Rights in Great Britain (CEHR)<sup>18</sup>. This body will bring together the three existing equality bodies (the CRE, the Equal Opportunities Commission and the Disability Rights Commission) and deal with discrimination on grounds of race, gender, disability, religion and belief, sexual orientation and age. The CEHR will also have responsibilities in human rights areas other than those connected with non-discrimination and equality. ECRI notes that the government has widely consulted civil society organisations on this proposal. There appears to be widespread support for a body which would deal more easily with cross-cutting issues of discrimination. However, there is also considerable concern that the CEHR, as presently envisaged, may result in less attention, powers and resources being given to race equality issues than is the case at present. Furthermore, many have highlighted the risk that, in the absence of a single equality act, CEHR would end up presiding over a hierarchy of equality strands. It has, therefore, been suggested that a single equality body should not be established – or at least, the existing equality bodies should not be merged into one before a single equality act which provides equal protection to individuals

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<sup>17</sup> Constitutional provisions and other basic provisions.

<sup>18</sup> The Scottish Parliament has already committed to setting up a separate Human Rights Commission for Scotland.

against discrimination on the different grounds to be covered by CEHR is in force<sup>19</sup>.

**Recommendations:**

41. ECRI recommends that the authorities of the United Kingdom ensure that the establishment of a single equality body does not result in less attention, powers and resources being given to race equality issues than is the case at present. It also reiterates, in this context, its call for the swift adoption of an act which provides equal protection to individuals against discrimination on the grounds covered by ECRI's mandate.
42. As concerns Northern Ireland, in its second report ECRI noted that the Northern Ireland Act (1998) had merged the commissions previously entrusted with promoting equality of different disadvantaged groups into the Equality Commission of Northern Ireland (ECNI), and expressed the hope that this would not result in less attention being paid to racism and racial discrimination. The authorities of the United Kingdom have stated that there has been no reduction in the emphasis placed on combating racism and racial discrimination as a result of this measure. However, some non-governmental organisations consider that racial equality issues are not given as much attention as other equality strands covered by ECNI.

**Recommendations:**

43. ECRI recommends that the authorities of the United Kingdom support work to ensure that the equality strands covered by ECRI's mandate are given adequate attention within ECNI.

**Education and awareness raising**

44. In its second report, ECRI recommended that the National Curriculum be reviewed for all grades in order to ensure that cultural diversity is valued and to help prevent racism. ECRI also recommended that teachers be properly trained to teach any new subject introduced in this field. ECRI welcomes the introduction in 2002 of Citizenship as a compulsory National Curriculum subject in secondary schools in England, Wales and Northern Ireland<sup>20</sup>. This requires that pupils be taught about the diversity of national, regional, religious, and ethnic identities in the United Kingdom and the need for mutual respect and understanding. There are reports, however, according to which in practice the implementation of this requirement is very patchy. In particular, many schools reportedly do not teach Citizenship as a separate subject and have chosen instead to deliver it through existing subjects.

**Recommendations:**

45. ECRI recommends that the authorities of the United Kingdom ensure that the National Curriculum for all grades, including primary school, reflect the needs of a culturally diverse school population and constitute an effective tool against racism. It recommends that the authorities monitor the practical implementation

<sup>19</sup> See above Civil and administrative law provisions.

<sup>20</sup> In Scotland, Citizenship has been introduced as a cross-curricular activity for Scotland's non-statutory curriculum.

of the requirement that Citizenship be taught in secondary schools and take the necessary steps to ensure that this is done effectively, including by training teachers and ensuring that adequate time is spent on the subject. ECRI encourages the authorities of the United Kingdom to ensure that the public duty to promote racial equality, which is binding on all education authorities, is duly used to monitor progress in these matters.

## Reception and status of non-citizens

### - *Immigration*

46. Section 19D of the RRAA, as amended by Section 6 of the NIAA, provides for an exception to the principle of non-discrimination, by making it lawful for immigration officers to “discriminate against another person on grounds of nationality or ethnic or national origins in carrying out immigration functions” when this is authorised by a Minister. An Independent Race Monitor, also established under the RRAA, monitors the effect of these Ministerial authorisations<sup>21</sup>. Despite the safeguard of the Independent Race Monitor and the reportedly restrictive approach taken by the authorities in issuing authorisations, ECRI considers that no civil servant, irrespective of the function exercised, should be allowed to discriminate against (i.e. treat differently without an objective and reasonable justification) persons on grounds of nationality or ethnic or national origin. ECRI notes that one such authorisation issued in April 2001 expressly authorised United Kingdom’s immigration officers to subject certain groups of persons “to a more rigorous examination than other persons in the same circumstances”<sup>22</sup>. In this connection, ECRI notes with serious concern reports that Roma passengers boarding flights bound to London were openly discriminated against by United Kingdom’s border official at Prague Airport despite an agreement with the Czech government that there would be no racial discrimination in the application of pre-entry control. This scheme has since been declared by the House of Lords to be inherently discriminatory and unlawful under the Race Relations Act 1976.
47. Since ECRI’s second report where it noted that the powers of immigration officers to enter premises, search and arrest people had been extended, these powers have been further broadened by the NIAA and the Asylum and Immigration (Treatment of Claimants, etc.) Act (hereafter: AIA). New immigration-related offences have also been created. ECRI notes that immigration officers may question people to determine their immigration status as a result of a referral by a police officer, who has stopped an individual under police powers and in the course of the investigation becomes concerned about the individual’s immigration status, or because the individual’s behaviour led the immigration officer to suspect that an immigration offence may have been committed. However, ECRI notes reports of repeated operations conducted jointly by immigration officers and the British Transport Police during which persons have allegedly been questioned on the basis of their appearance or language in public transport premises.

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<sup>21</sup> There were ten authorisations in operation during the year 2003/2004, the most wide-ranging of which, according to the Independent Race Monitor’s report which covers this period, allowed discrimination in the examination of arriving passengers from specified nationalities.

<sup>22</sup> These persons were: “1. A person who is of Chinese ethnic origin presenting a Malaysian or Japanese passport or any other travel document issued by Malaysia or Japan. 2. A person of one of the following ethnic or national origins: a) Kurd; b) Roma; c) Albanian; d) Tamil; e) Pontic Greek; f) Somali; g) Afghan”. This authorisation was revoked in 2002.

48. In its second report, ECRI expressed concern that the provisions which penalise employers who take on employees whose immigration status prevents them from working in the United Kingdom (section 8 of the Asylum and Immigration Act 1996) could increase the likelihood of racial discrimination in recruitment. The authorities of the United Kingdom report that they have taken measures to reduce the risk of employers putting in place discriminatory practices. These measures include the preparation of a Code of Practice and of compliance support material for employers, as well as the establishment of helpline facilities for them.
49. ECRI notes that the AIA introduces provisions in order to combat so-called sham-marriages. These provisions impose restrictions, *inter alia*, on marriages involving non-European Economic Area nationals. It has been argued that this may be discriminatory or incompatible with the right to marry contained in Article 12 of the ECHR. The authorities of the United Kingdom have indicated that, following the parliamentary scrutiny of these provisions, they are satisfied that such provisions are compatible with the Human Rights Act.

#### **Recommendations:**

50. ECRI urges the authorities of the United Kingdom to ensure that civil servants, including those working in the immigration and nationality fields, do not discriminate against persons on grounds such as race, colour, language, religion, nationality and national and ethnic origin. To this end, ECRI recommends, in particular, that the authorities of the United Kingdom repeal Section 19D of the RRAA.
51. ECRI recommends that the authorities of the United Kingdom keep the operation of section 8 of the Asylum and Immigration Act 1996 closely under review and take any necessary action, such as repealing it, should evidence that it leads to racial discrimination come to light.
52. ECRI recommends that the authorities of the United Kingdom ensure that the right of persons in the United Kingdom to marry is thoroughly respected without discrimination, including on the basis of the nationality of the spouses.

#### **- Asylum seekers and refugees**

53. See Section III of this report.

#### **Access to public services**

##### **- Access to education**

54. In its second report, ECRI recommended that the authorities of the United Kingdom: take measures to address the issue of the high number of pupils from certain ethnic minority groups that are expelled or suspended from school; monitor ethnic minority pupils' achievement and set achievement targets; and cater for the needs of non-English mother tongue children, particularly by ensuring adequate teaching of English as an additional language. The authorities report that action has been taken in all these fields. For instance, research on exclusions of ethnic minority pupils is being refined, targeted funding for improvement of ethnic minority attainment is available in England, targets on reducing inequalities in education have been set for the period 2005-

2010 and initiatives are being implemented to improve the availability of teachers of English as a second language. It has been pointed out, however, that the picture of ethnic minority achievement in education is complex and needs more refined research. Although the situation varies according to different ethnic groups, there appear to be factors within the education system which, at one stage or another, impact negatively on all ethnic minority students and their subsequent career patterns.

55. ECRI notes that the Teacher Training Agency aims to increase the recruitment of ethnic minority trainees to 9% of all new entrants by 2006 and to sustain recruitment at this level for a further three years. The proportion of ethnic minority teacher trainees has reportedly considerably increased since ECRI's second report and was 8,7% of the total number of trainees in 2003.
56. Following the violent unrest in towns and cities in the North of England in the summer of 2001<sup>23</sup>, the authorities of the United Kingdom commissioned enquires into these disturbances. These enquiries found, *inter alia*, that these disturbances had taken place in a context where ethnic minority, mainly British Asian, and majority communities were segregated, particularly in areas such as education, housing and employment<sup>24</sup>. ECRI notes that the report made recommendations for avoiding *de facto* ethnic and religious segregation in schools.

#### **Recommendations:**

57. ECRI recommends that the authorities of the United Kingdom closely monitor compliance of all school authorities with the duty to promote racial equality and to eliminate racial discrimination and that they use all opportunities offered by the duty to advance the position of ethnic minorities in education. ECRI particularly encourages the authorities to ensure comprehensive monitoring of the participation and achievements of pupils from minority groups in schools and to target specific funding for ethnic minorities. It recommends that the authorities ensure that this be done throughout the United Kingdom. ECRI recommends that the authorities pursue and intensify their efforts to improve specialised teaching of English as an additional language and that they work to reduce the disproportionate numbers of ethnic minority pupils excluded from schools and to raise the latter's education achievement.
58. ECRI recommends that the authorities continue and intensify the drive to recruit ethnic minority teachers and retain them in the teaching profession once they are recruited.
59. ECRI recommends that the authorities of the United Kingdom take measures to counter *de facto* ethnic and religious segregation in schools in the United Kingdom.

#### **- Access to health**

60. ECRI notes that research indicates that there is a higher incidence of certain health conditions in ethnic minority communities. In addition, people from ethnic minorities may encounter difficulties in accessing health services, for example

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<sup>23</sup> See below, Overall strategies to fight against racism and promote community cohesion.

<sup>24</sup> Community Cohesion: A Report of the Independent Review Team Chaired by Ted Cattle.

where there are language barriers or when services offered are not culturally sensitive. ECRI has been made aware of initiatives to tackle these problems. These include the setting of race equality targets for the Department of Health, and free and voluntary health screenings for asylum seekers. Research also seems to indicate that certain ethnic minority groups are over-represented as users of mental health services, experience poorer outcomes, and are more likely to be interned permanently in mental health institutions. In this connection, ECRI notes that the Independent Inquiry published in 2004 into the death of David Bennett, an African Caribbean man who died in a mental health institution, makes recommendations in the area of racism and cultural awareness and sensitivity in mental health services.

### **Recommendations:**

61. ECRI recommends that the authorities of the United Kingdom continue and intensify work to address inequalities experienced by different ethnic groups in the health sector, including as concerns access to health services. It recommends that they devote particular attention to tackling the disproportionate representation of certain ethnic minority groups among the users of mental health services and to addressing the issue of racism and the need for more cultural awareness and sensitivity in these institutions.

### **Employment**

62. ECRI notes that, following the publication of the Cabinet Office Strategic Unit Report on Ethnic Minorities and the Labour Market in March 2003, a cross-Government Strategy is being implemented and monitored by an inter-Ministerial Task Force. The authorities of the United Kingdom have explained to ECRI that the Strategy aims to address in an integrated way three main areas, which research indicate as being key factors in the persistent situation of disadvantage which ethnic minorities face in the labour market: lack of skills, qualifications and experience; geographical disadvantage, including the disadvantage linked to the fact that they often live in generally deprived areas; and racial discrimination and harassment. ECRI notes that, in accordance with a recommendation it made in this sense in its second report, part of the work carried out under the Strategy aims at ensuring, through monitoring and targeted action, that ethnic minorities benefit in practice from opportunities generally available for the unemployed. However, ECRI wishes to underline the important role that racial discrimination and harassment still play in keeping ethnic minorities away from the labour market. In order to tackle these issues, it has been suggested that the authorities make a more extensive and effective use of levers such as public procurement and that an extension of the duty to promote racial equality to parts of the private employment sector would also be beneficial<sup>25</sup>. ECRI also notes that, with the exception of Northern Ireland<sup>26</sup>, remedies currently available before Employment Tribunals for racial discrimination cases do not allow for measures to be imposed on the discriminator in order to alter his or her behaviour in order to avoid a recurrence of the discriminatory acts.

<sup>25</sup> See above, Civil and administrative law provisions.

<sup>26</sup> The Northern Ireland Fair Employment and Treatment Order 1998 allows the Northern Ireland Fair Employment Tribunal to make recommendations that the "respondent take within a specified period action appearing to the Tribunal to be practicable for the purpose of obviating or reducing the adverse effect on a person other than the complainant of any unlawful discrimination to which the complaint relates".

63. In its second report, ECRI recommended that the authorities of the United Kingdom extend race equality employment targets to other areas of the public sector and that particular attention be devoted to the representation of members of ethnic minorities in senior positions. The authorities of the United Kingdom have stated to ECRI their commitment to achieving fully representative workforces across the public sector. They report that employment targets are split into operational and non-operational sections to ensure that ethnic minorities are not concentrated in back office areas. The Cabinet Office has responsibility over government-wide targets for diversity of senior civil servants, including targets for ethnic minority senior civil servants.

**Recommendations:**

64. ECRI encourages the authorities of the United Kingdom in their efforts to improve the employment situation of ethnic minorities. It encourages the authorities to thoroughly implement the Ethnic Minority Employment Strategy and recommends, in this respect, that they pay particular attention to eliminating racial discrimination and racial harassment in the workplace. To this end, ECRI recommends that a more extensive and effective use be made by the authorities of levers such as public procurement, that consideration be given to extending the duty to promote racial equality to parts of the private employment sector and that the remedies currently available before Employment Tribunals for racial discrimination cases be extended. ECRI furthermore recommends that the authorities of the United Kingdom continue and intensify their work to achieve fully representative workforces across the public sector and at all levels. It recommends that they regularly monitor the progress made in this area.

**Vulnerable groups**

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

65. See Section III of this report.

- ***Muslim communities***

66. ECRI is concerned at reports that the Muslim communities of the United Kingdom continue to experience societal prejudice, discrimination across a wide range of crucial areas, such as employment and the criminal justice system, as well as harassment and violence. It is particularly concerned that this situation has considerably worsened since the events of 11 September 2001. Muslims have, since then, suffered in particular from their association in public perception with terrorism. United Kingdom Ministers have denounced any attempts to link Islam with terrorism or Muslims in general with terrorist activities. Despite this, these public perceptions have often been fostered by certain sections of the press and by the discriminatory implementation of anti-terrorism legislation, including particularly the provisions on “stop and search”. ECRI will address certain aspects of the situation of the Muslim communities of the United Kingdom in different parts of this report<sup>27</sup>. It wishes to stress here, however, that many civil society organisations consider that Islamophobia and its manifestations in institutions and society in general are not yet adequately recognised, understood and therefore addressed in the United Kingdom.

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<sup>27</sup> See Administration of justice, Religious groups, Monitoring the situation, Media, Anti-terrorism legislation and its implementation.

**Recommendations:**

67. ECRI recommends that the authorities of the United Kingdom maintain a regular and even closer process of consultation with representatives of the Muslim communities of the United Kingdom on the causes of Islamophobia and on the ways in which this manifests itself in institutions and in society in general. They should elaborate an overall strategy against Islamophobia which cuts across different areas of life. ECRI draws the attention of the authorities of the United Kingdom to its General Policy Recommendation No. 5<sup>28</sup>, which proposes a range of measures they can take to combat intolerance and discrimination against Muslims.

**- Jewish communities**

68. ECRI is concerned at the considerable and steady increase of antisemitic incidents in the United Kingdom since ECRI's second report. While these incidents usually mirror tensions in the Middle East, representatives of the Jewish communities report that there now seems to be a higher level of background violence against these communities. Although manifestations of antisemitism continue to come from extreme right-wing and neo-Nazi groups, an increasing number of antisemitic manifestations, and notably antisemitic speech, is reportedly coming from Muslim fundamentalist groups. Although criminal prosecutions that have taken place have reportedly put a stop to the worst excesses of antisemitic speech, the difficulties mentioned above in the implementation of the legislation against incitement to racial hatred<sup>29</sup> have resulted in many cases of antisemitic speech having gone unpunished. As concerns antisemitic hate-mail, ECRI notes that under the Malicious Communication Act, the sending of hate mail, including electronic mail, is prohibited. However, it has been reported to ECRI that the requirement that a case be brought within six months of the commission of the offence often makes prosecutions under the Act practically impossible.

**Recommendations:**

69. ECRI recommends that the authorities of the United Kingdom continue and intensify their efforts to counter all manifestations of antisemitism. It reiterates in this context the recommendations formulated above on the implementation of existing criminal law provisions, and notably those against incitement to racial hatred. It also recommends that the authorities review the operation of the Malicious Communication Act to ensure that it constitutes an effective tool to counter hate-mail, including antisemitic hate-mail, and that they introduce any necessary changes to this end. More generally, ECRI draws the attention of the authorities of the United Kingdom to its General Policy Recommendation No. 9<sup>30</sup>, which proposes a range of measures they can take to combat antisemitism.

<sup>28</sup> CRI (2000) 21: ECRI General Policy Recommendation n° 5: Combating intolerance and discrimination against Muslims.

<sup>29</sup> See above, Criminal law provisions.

<sup>30</sup> CRI (2004) 37: ECRI General Policy Recommendation n° 9 on the fight against antisemitism

- **Religious groups**

70. ECRI has already addressed the question of legislation against religiously aggravated offences and incitement to hatred directed against religious groups in other parts of this report<sup>31</sup>. As concerns legislation against religious discrimination, in its second report ECRI noted that legal protection against discrimination was only granted to religious groups inasmuch as they were also deemed by the courts to constitute a racial group<sup>32</sup>. Following the adoption of Regulations to transpose EU Directive 2000/78/EC<sup>33</sup>, religious groups in the United Kingdom presently enjoy protection against discrimination (irrespective of whether or not they are also deemed to constitute a racial group) only in employment and training. However, in other areas such as education, health, social benefits or provision of goods and services, they continue to enjoy protection only to the extent that they are also considered as being racial groups. ECRI is pleased to note that the authorities of the United Kingdom have announced plans to introduce legislation to protect religious groups against discrimination in provision of goods, facilities, services and premises.
71. ECRI notes that in 2003 a Faith Communities Unit was established within the Home Office. This Unit has, *inter alia*, the task of supporting and promoting inter-faith dialogue.

**Recommendations:**

72. ECRI recommends that the authorities of the United Kingdom extend legal protection against religious discrimination to all areas in respect of which legal protection against racial discrimination is currently provided.
73. ECRI encourages the authorities of the United Kingdom to continue and intensify their efforts to support and promote inter-faith dialogue.

**Northern Ireland**

74. In its second report, ECRI recommended that action be taken against what appeared to be significantly negative attitudes towards ethnic minorities in Northern Ireland. ECRI notes with concern that, since then, there has been a clear rise in hate crimes in Northern Ireland, notably against members of ethnic minority groups. These groups include long established communities, but also migrant workers who arrived in Northern Ireland more recently to respond to a need for skilled staff in certain economic sectors. It has been pointed out that, in some cases, these attacks have seen the involvement of paramilitary groups and more generally, that manifestations of racism in Northern Ireland must be seen in the context of the historic sectarian prejudice and violence opposing Catholics and Protestants in this part of the United Kingdom. The role played by extreme-right wing formations in some of these attacks has also been stressed. ECRI notes that the authorities in Northern Ireland have started to tackle these problems and, more generally, the issues around racism and racial discrimination in Northern Ireland. For instance, the police service has started to

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<sup>31</sup> See Criminal law provisions

<sup>32</sup> The case law, as it stood at the time and still stands, indicates, for instance, that while Jews and Sikhs are considered as being a racial group, Muslims, Rastafarians, Christians or Buddhists are not.

<sup>33</sup> Civil and administrative law provisions.

monitor and record racist incidents<sup>34</sup>. A race Equality Unit has been set up within the Office of the First Minister and the Deputy First Minister (OFMDFM) and a Northern Ireland Race Forum, composed of Ministerial and civil society representatives, was set up in February 2003 with the task, *inter alia*, of elaborating and implementing a Race Equality Strategy which will be launched shortly. As mentioned above, legislation against racially aggravated behaviour has also been adopted<sup>35</sup>. However, in order to ensure a more thorough response to racism and racial discrimination in Northern Ireland, the need for more thorough statistical information both on the situation of different ethnic groups in various areas of life and on manifestations of racism and the implementation of legislation to counter them has been highlighted. The need for the Race Equality Strategy to cover the commitments undertaken at the World Conference against Racism<sup>36</sup> and to address the problems faced by migrant workers in Northern Ireland has also been highlighted.

75. Particular concern has been expressed at the continuing situation of social exclusion and discrimination faced by the Irish Traveller community, which ECRI recommended in its second report be addressed as a priority in Northern Ireland. ECRI deals with the situation of Roma/Gypsies and Travellers throughout the United Kingdom in Section III of this report. However, in this connection ECRI notes that there is strong support among civil society organisations for a thorough implementation of the recommendations of the Promoting Social Inclusion (PSI) Working Group on Travellers, which was established in October 1999 by the OFMDFM. The authorities have pointed out that a sub-group of the Northern Ireland Race Forum will oversee the implementation of the government response to the PSI recommendations.

#### **Recommendations:**

76. ECRI recommends that the authorities of the United Kingdom intensify their efforts to combat racism and racial discrimination in Northern Ireland. In particular, it recommends that the Northern Ireland Race Equality Strategy reflect the commitments undertaken at the World Conference against Racism and that it cover the situation of migrant workers. ECRI recommends that, in the implementation of the Strategy, the authorities focus on concrete race equality outcomes in addition to creating structures and processes to tackle inequalities. ECRI reiterates its call that urgent action be taken to address the situation of social exclusion and discrimination faced by the Irish Traveller community. It recommends in particular that the recommendations made by the PSI be swiftly and thoroughly implemented.

#### **Media**

77. ECRI is still concerned by the tone of debate in the national media, especially that surrounding asylum seekers, immigrants, refugees, Roma/Gypsies, Travellers and Muslims, particularly since the events of 11 September 2001. This has included material which was racist and inflammatory in its effect. ECRI notes that some progress has been made in this field since its second report. For instance, the Press Complaints Commission (PCC) issued guidelines in

<sup>34</sup> Reports of racist incidents have risen from 102 in 2000/2001 to 145 in the first quarter of 2004/2005 alone.

<sup>35</sup> See Criminal law provisions.

<sup>36</sup> See below, Overall strategies to fight against racism and promote community cohesion.

October 2003 on the correct terminology to be used when reporting on asylum and refugees. Some newspapers have also reportedly covered terrorism in a more professional way, and have been more aware of the risk of making generalisations and of the need to avoid stigmatisation of communities. However, civil society organisations which are active in combating racism and racial discrimination still place media reporting on asylum, immigration and terrorism at the centre of their concerns. In the asylum and immigration field, the media are, for instance, reported to have continued to use provocative, sensationalist and sometimes outright racist language, present facts and statistics in a biased way, and accompany articles with threatening images. As concerns terrorism, it has been pointed out, *inter alia*, that the media tend to give extensive coverage to arrests of suspects of terrorism, who are predominantly Muslims, but fail to report on their release, which has reportedly followed almost each of such arrests.

78. In its second report, ECRI noted that, although it contained provisions against discrimination, the Code of Practice enforced by the PCC was not meant to provide protection to groups, but only to individuals. The situation has not changed in this respect. ECRI has noted, however, that there is wide support from civil society organisations for a more active role of the media profession in tackling racist and racially inflammatory material that targets certain groups of persons. ECRI notes that, as part of its current work to promote community cohesion<sup>37</sup>, the authorities of the United Kingdom have started working with the media and other interest groups at regional and local level on how the press might help promote community cohesion.

#### **Recommendations:**

79. ECRI encourages the authorities of the United Kingdom to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards asylum seekers, refugees and immigrants or members of any minority group, including Roma/Gypsies, Travellers and Muslims, and the need to play a proactive role in countering such an atmosphere. ECRI recommends that the authorities of the United Kingdom engage in a debate with the media and members of other relevant civil society groups on how this could best be achieved. It recommends that any successful initiatives developed at local level in this field, be reproduced on a broader scale at national level.

#### **Conduct of law enforcement officials**

80. In its second report, ECRI recommended that the authorities of the United Kingdom implement all the recommendations contained in the Stephen Lawrence Inquiry Report and that they review the implementation of these recommendations. Some of the initiatives undertaken to implement the recommendations made in the Stephen Lawrence Inquiry Report on the reporting and recording of racist incidents have already been referred to in other parts of this report<sup>38</sup>. More generally, the authorities of the United Kingdom report that, five years after the publication of the Inquiry Report, they have conducted research to evaluate progress made. They report that findings indicate that while some progress has been made, there is still some way to go

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<sup>37</sup> See below Overall strategies to fight against racism and promote community cohesion.

<sup>38</sup> See above, Criminal law provisions.

to increase the level of understanding required to ensure that all practices promote race equality. The authorities of the United Kingdom intend to continue to take this work forward based on the recommendations from the research.

81. ECRI welcomes the progress that has been made in this area. It is concerned, however, that there is still evidence of negative attitudes in the police service towards ethnic minority groups. ECRI notes that, following the broadcast of a television documentary in October 2003 which exposed racist behaviour within the police force, the CRE opened a formal investigation into racism in the police service. The investigation, whose findings are expected by early 2005, will focus on recruitment and training practices, monitoring of officers' conduct, management of officers' behaviour and on how these functions are overseen by the police authorities. ECRI notes that the investigation will also look into how the police service has complied with its statutory duty to promote racial equality.

**Recommendations:**

82. ECRI strongly encourages the authorities of the United Kingdom to take forward their work on the implementation of all the recommendations of the Stephen Lawrence Inquiry Report, that they ensure that this is done in all police forces in the country and that they keep progress under regular review. ECRI recommends that the authorities of the United Kingdom urgently follow up on the findings and on any recommendations that may be formulated at the end of the formal investigation conducted by the CRE.

83. In its second report, ECRI recommended that urgent research be carried out and action taken to address the disproportionate number of ethnic minorities who are subject to "stop and searches". ECRI notes that, since its second report, figures concerning "stop and searches" show that this disproportion has continued to increase<sup>39</sup>. ECRI notes that the authorities of the United Kingdom have taken a number of measures to address this situation. For instance, under its Public Service Agreement, the Home Office has set a specific target to reduce the disproportionate impact of "stop and searches" on ethnic minorities. A manual is being prepared on the use of "stop and search" powers. ECRI also notes that, following a recommendation of the Stephen Lawrence Inquiry Report that all "stops" in addition to "stops and searches" be recorded, the authorities of the United Kingdom have decided that this recommendation shall be implemented by all police forces by April 2005 at the latest<sup>40</sup>.

**Recommendations:**

84. ECRI encourages the authorities of the United Kingdom in their efforts to monitor the impact of the use of "stop and search" powers on ethnic minorities and to reduce their disproportionate use in this respect. It recommends that the recommendation made in the Stephen Lawrence Inquiry Report in this field be implemented without delay.

<sup>39</sup> In 2002/2003, for instance, ethnic minorities in England and Wales were 6 times more likely to be stopped and searched than the majority population. This compares with five times in 2001/2002. Figures also show a dramatic increase in stops and searches of Asians under powers introduced by anti-terrorism legislation (see below, Anti-terrorism legislation and its implementation).

<sup>40</sup> Implementation of this recommendation has already started in police forces in Scotland in April 2004 and in the Metropolitan Police in October 2004.

85. In its second report, ECRI recommended that an independent mechanism to investigate serious complaints of misbehaviour, including of racist or racially discriminatory behaviour, on the part of police officers be established. ECRI is pleased to note that under the Police Reform Act 2002, the authorities of the United Kingdom have established, with effect from 1 April 2004, an Independent Police Complaints Commission (IPCC). The IPCC has a dual purpose. Firstly, it acts as an overall guardian with the objective of ensuring that all complaints against the police are dealt with properly and fairly by the police itself; secondly, it may investigate directly some more serious cases – the police has been put under an obligation to refer these to the IPCC. ECRI notes that approximately 700 cases have been referred to the IPCC so far, 60 of which have contained elements of discrimination.

**Recommendations:**

86. ECRI encourages the authorities of the United Kingdom in their efforts to establish an independent body with the objective of ensuring proper and fair investigations into alleged instances of police misconduct. It recommends, in particular, that the authorities provide the IPCC with sufficient human and financial resources to enable it to carry out its own investigative functions effectively.

87. In its second report, ECRI recommended urgent research and action to address the issue of the disproportionate number of persons from ethnic minorities who die in custody. The authorities of the United Kingdom report that they are concerned at the apparent rise in the number of persons from ethnic minority groups who have died in custody and that they have commissioned independent research to try and establish the causes of this phenomenon. ECRI understands that the results of this research are expected to be published shortly.

**Recommendations:**

88. ECRI encourages the authorities of the United Kingdom in their efforts to carry out research on the disproportionately higher number of members of ethnic minorities who die in custody and recommends that they address this problem as a matter of urgency.

89. In its second report, ECRI recommended that all training in race relations issues include strategies for placing such principles firmly within operational policing. It also recommended that the effectiveness of such training be evaluated. The authorities of the United Kingdom report that, following several recent investigations into race and diversity training in the police force, a new training strategy is being prepared. This strategy will embed training and development within operational policing and provide arrangements for training to be evaluated at local and national level and for this to involve diverse communities.

90. In its second report, ECRI recommended the adoption of strategies to recruit and retain ethnic minorities in the police and to improve representation of ethnic minorities in senior positions in the police. The authorities of the United Kingdom have reported that targets were set for the police force for the recruitment, retention and career progression of ethnic minority officers and police staff to be achieved by 2009 and that progress is monitored annually. Although it has been increasing over the years, ECRI notes that ethnic minority

representation in the police force still does not reflect the ethnic composition of society with around 3% of the total number of police officers being of ethnic minority background in 2001/2002. ECRI notes with interest that the Association of Chief Police Officers announced in July 2004 that no member of the police force, whether a police officer or civilian, can be a member of an organisation whose aims or pronouncements contradict the police's general duty to promote race equality and made it clear that this included the British National Party<sup>41</sup>.

### **Recommendations:**

91. ECRI recommends that the authorities of the United Kingdom continue and intensify work to ensure high quality training for police officers in combating racism and in policing a diverse society.
92. ECRI recommends that the authorities of the United Kingdom continue and intensify work to address the under-representation of ethnic minorities in the police. It recommends that they monitor progress in recruitment, retention and career advancement.

### **Overall strategies to fight against racism and promote community cohesion**

93. ECRI is pleased to note that, following the World Conference against Racism (WCAR) held in Durban in 2001, the authorities of the United Kingdom have worked together with civil society organisations towards the development of a National Action Plan Against Racism (NAPAR), the establishment of which was one of the commitments undertaken by national governments at the WCAR. ECRI also notes that, following the disturbances of spring and summer 2001 in the North of England, which involved persons from different cultural, religious and ethnic backgrounds, the authorities of the United Kingdom have made considerable efforts to develop a strategy aimed at promoting community cohesion throughout the country<sup>42</sup>. To this end, the authorities have consulted a wide range of civil society and other actors and a Community Cohesion and Race Equality Strategy was launched in January 2005. ECRI notes that Community Cohesion aims to incorporate and go beyond racial equality and social inclusion. According to the Government's consultation pamphlet<sup>43</sup>, Community Cohesion is to be articulated around four main aims: promoting inclusive notions of citizenship, identity and belonging; eradicating racism and extremism; tackling inequality and opening opportunities for all; and building active communities, whose members value involvement. ECRI notes that civil society organisations have generally supported the establishment and implementation of a community cohesion and race equality strategy and have welcomed the link increasingly being made between race equality and community cohesion on the one hand and the need for changes in society as a whole on the other. However, they have also highlighted the need for ensuring that the race equality strand of the strategy be given the importance it deserves. To this end, it has been stressed that the Community Cohesion and Race Equality Strategy should thoroughly reflect the results of the work already carried out in view of the establishment of a NAPAR.

<sup>41</sup> See below, Exploitation of racism in politics.

<sup>42</sup> A Community Cohesion Unit has also been established within the Home Office. The Unit has, inter alia, been entrusted with the task of supporting and spreading good community cohesion practice at the local level.

<sup>43</sup> Strength in Diversity – Towards a Community Cohesion and Race Equality Strategy.

**Recommendations:**

94. ECRI encourages the authorities of the United Kingdom in their efforts to implement a strategy aimed at promoting community cohesion and race equality. It recommends that they ensure that the weight given to the race equality strand of this strategy reflect its importance and, to this end, that the strategy thoroughly reflect the results of the work already carried out in view of the establishment of a NAPAR.

**Monitoring the situation**

95. ECRI welcomes the extensive ethnic monitoring that the authorities of the United Kingdom carry out in different areas of policy. ECRI has registered wide support within civil society in the United Kingdom for such monitoring as a way of better assessing the situation of ethnic minority groups and targeting specific policy responses. In this connection, it has been suggested that there is a need for data broken down by ethnic origin to be collected in respect of more groups than those currently covered<sup>44</sup>. The need has also been highlighted for the collection of data broken down by religion, since data on the situation of religious groups in different areas of policy are at present inferred indirectly from data broken down by nationality.

**Recommendations:**

96. ECRI encourages the authorities of the United Kingdom in their efforts to collect data broken down by ethnic origin in different areas of policy. It recommends that the authorities ensure that the collection of such data cover as wide a range of groups as possible. It also recommends that the authorities collect data broken down by religion. ECRI recommends that, in so doing, the authorities ensure thorough consultation and involvement of all the communities concerned.

**Exploitation of racism in politics**

97. ECRI notes the presence in political debate in the United Kingdom of racist and xenophobic discourse, notably targeting asylum seekers and immigrants. Although the electoral success of parties who have resorted to openly racist and xenophobic propaganda is still relatively low at nation-wide level, ECRI notes with concern that one of these parties, the British National Party, has increased its overall representation at local level and has built considerable local support bases in certain areas.

**Recommendations:**

98. ECRI recommends that the authorities of the United Kingdom take measures to tackle the exploitation of racism in politics. In this respect, it draws the attention of the authorities to its General Policy Recommendation No. 7, which sets out measures that can be taken to this end. ECRI emphasises, in particular, that according to this General Policy Recommendation “the law should provide for the possibility of dissolution of organisations which promote racism”.

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<sup>44</sup> See below, The situation of Roma/Gypsies and Travellers.

## II. NEW DEVELOPMENTS

### Anti-terrorism legislation and its implementation

99. Since ECRI's second report, the United Kingdom has adopted two main pieces of legislation to counter terrorism: the Terrorism Act 2000 and the Anti-Terrorism, Crime and Security Act 2001 (ATCSA). The Terrorism Act creates, *inter alia*, new terrorism-related offences and gives the police new counter-terrorism powers. The ATCSA, which was adopted in the aftermath of the events of 11 September 2001, and is currently in force until March 2005, unless renewed for a further period of up to one year (subject to the overall expiry of part 4 in November 2006), introduced exceptional powers to counter the terrorist threat posed by Al Qaida and the network of terrorist groups associated with it.
100. Part 4 of the ATCSA allows for the indefinite detention of foreign nationals who are suspected of involvement in international terrorism and cannot be deported. Human rights observers have questioned the conformity of this legislation with different aspects of international human rights law. ECRI is concerned that, in order to adopt this provision, the United Kingdom had to avail itself of the possibility to derogate from Article 5(1)(f) of the ECHR, which protects against deprivation of liberty except for purposes of deportation or extradition<sup>45</sup>. ECRI is also concerned that part 4 of the ATCSA discriminates against persons on the basis of nationality, inasmuch as it applies only to foreign nationals. ECRI notes that, in a legal challenge brought before the Special Immigration Appeals Commission (SIAC), the latter found that these provisions were discriminatory<sup>46</sup>. However, the Court of Appeal reversed the SIAC's findings on discrimination. ECRI notes that, in December 2004, the House of Lords held that the provisions on detention contained in Part IV of the ATCSA are contrary to the European Convention on Human Rights, insofar as they are disproportionate and permit detention of suspected international terrorists in a way that discriminates on the ground of nationality or immigration status.

#### **Recommendations:**

101. ECRI recommends that the authorities of the United Kingdom review the provisions contained in Part 4 of the ATCSA. In this connection, ECRI draws the attention of the authorities to its General Policy Recommendation No.8<sup>47</sup> (GPR 8), which recommends to member States of the Council of Europe that they "review legislation and regulations adopted in connection with the fight against terrorism to ensure that these do not discriminate directly or indirectly against persons or groups of persons, notably on grounds of "race", colour, language,

<sup>45</sup> Article 15 of the ECHR provides for the possibility for a contracting party to derogate from its human rights obligations "in time of war or other public emergency threatening the life of the nation". The United Kingdom formally derogated from Article 5(1)(f) in December 2001.

<sup>46</sup> The SIAC noted that the application of indefinite detention provisions "would properly be confined to the alien section of the population only if, as the Attorney-General contends [,] the threat stems exclusively or almost exclusively from that alien section." However, the SIAC points out that "evidence before us demonstrates beyond argument that the threat is not so confined. There are many British nationals already identified – mostly in detention abroad – who fall within the definition of "suspected international terrorists" and it was clear from the submissions made to us that [...] there are others at liberty in the United Kingdom who could be similarly defined. In those circumstances we fail to see how the derogation can be regarded as other than discriminatory on the grounds of national origin".

<sup>47</sup> CRI (2004) 26: ECRI General Policy Recommendation N°8 on combating racism while fighting terrorism

religion, nationality or national or ethnic origin”, and that they “abrogate any such discriminatory legislation”.

102. ECRI furthermore draws the attention of the authorities of the United Kingdom to the recommendation contained in GPR 8 that member States should “ensure that [...] national legislation expressly includes the right not to be subject to racial discrimination among the rights from which no derogation may be made even in time of emergency”.
103. As concerns the implementation of anti-terrorist legislation, ECRI is concerned by widespread reports that ethnic and religious minority groups, and particularly Muslims, have been affected in a seriously disproportionate way by the application of the powers established through anti-terrorist legislation, including detention powers under Part 4 of the ATCSA and “stop and search”, arrest and detention powers under the Terrorism Act 2000<sup>48</sup>. In this respect, ECRI notes that under the Terrorism Act 2000, police officers are not required to act on the basis of reasonable suspicion to “stop and search” individuals.
104. ECRI is concerned that the anti-terrorism provisions highlighted above and the implementation of anti-terrorism legislation since ECRI’s second report have considerably contributed to a climate of fear and suspicion around ethnic and religious minority communities, and in particular around Muslim communities, or those identified as such. ECRI considers that this situation runs counter to efforts undertaken by the authorities of the United Kingdom to build an integrated society and cohesive communities. ECRI recognises the responsibility of the authorities of the United Kingdom to ensure the security of all communities in the country. ECRI considers, however, that the authorities are also under an obligation to assess the impact that their current legislation and policies against terrorism may have on race and community relations in the United Kingdom. In this connection, ECRI notes that no assessment has been carried out on the impact of the Terrorism Act and the ATSCA on race and community relations in the United Kingdom.

#### **Recommendations:**

105. ECRI recommends that the authorities of the United Kingdom ensure that anti-terrorism legislation is implemented in a manner that does not discriminate against persons or groups of persons, notably on grounds of actual or supposed “race”, colour, language, religion, nationality or national or ethnic origin.
106. ECRI recommends that the authorities of the United Kingdom assess the impact that their current legislation and policies against terrorism may have on race and community relations in the United Kingdom.
107. ECRI recommends that the authorities of the United Kingdom ensure that Muslim and other communities which are particularly affected by the implementation of anti-terrorism legislation are thoroughly consulted and involved in relevant fora concerning the implementation of anti-terrorism legislation.

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<sup>48</sup> Official figures show, for instance, that between the years 2001/2002 and 2002/2003 there was a 300% rise in the number of Asians who were stopped and searched under the Terrorism Act 2000, with a considerably higher rise in London.

### III. SPECIFIC ISSUES

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

108. In its second report, ECRI expressed concern at the negative climate of opinion concerning asylum seekers and refugees in the United Kingdom. It considered that such a negative climate was closely linked to frequent changes in asylum policies, which had been designed to increasingly deter these categories of persons from coming to the United Kingdom and which, in many cases, were openly presented as such in public debate. ECRI also found that hostility towards asylum seekers and refugees had been favoured by the assumption, promoted in public debate, that most asylum seekers are not genuine refugees, and by the vilification of those who are considered by the authorities to have invalid asylum claims.
109. ECRI notes with regret that the situation in this field has not improved. ECRI also notes the migratory pressures of recent years and the link, often made in public debate within the United Kingdom, between good race and community relations and public confidence in the system of immigration control. ECRI considers, however, that there is a real risk at present of the policies emerging from this situation having a negative effect on public opinion – an effect which could easily carry over into attitudes on race and community relations generally.
110. Since ECRI's second report, the United Kingdom has adopted new asylum legislation, which has introduced a number of restrictive measures and, perhaps more importantly, has been presented to the public as being instrumental to deterring asylum seekers from coming to this country. These trends are also reflected in the authorities' public commitment to attaining targets for reducing asylum applications -- for instance, the government is committed to reducing these by half in 2004 -- and for increasing the number of expulsions carried out. ECRI considers that the setting of targets in these areas provides a powerful illustration of how the debate on asylum in the United Kingdom has increasingly moved away from human rights considerations. ECRI notes that reports indicate that the anti-asylum rhetoric from some sections of the media and some politicians have inflamed the situation further by implying that the asylum system is being used by terrorists to gain access to the country and by depicting asylum seekers as coming in unmanageable numbers. Abuse of the asylum system is also a recurrent theme, although ECRI notes that estimates indicate that, on average, every year 40-50% of those who apply for asylum in the United Kingdom are found to have legitimate grounds for remaining in this country, either as refugees or as persons in need of humanitarian protection. These characterisations and themes have been challenged from time to time by the authorities, but not consistently and at all relevant levels, and in some cases these perspectives have been echoed and legitimised. As highlighted in different parts of this report, in recent years the authorities of the United Kingdom have made efforts to improve race relations among people living in the United Kingdom and to promote community cohesion. ECRI considers, however, that the adoption of increasingly restrictive measures in the field of asylum and the tone of public debate around the adoption of such measures run counter to these efforts and to the development of an integrated society which is genuinely respectful of differences.

111. In its second report, ECRI underlined that racial attacks and harassment against asylum seekers illustrated some of the dangers that an increasingly hostile climate of opinion towards this category of persons can bring about. While racist violence continues to constitute a problem generally, ECRI notes reports that the current climate of antagonism around asylum seekers has made the latter the group more at risk of racist violence in recent years.

**Recommendations:**

112. ECRI urges the authorities of the United Kingdom to take the lead in placing public debate on asylum securely in the realm of human rights. It recommends, in particular, that the authorities encourage a more balanced public debate on asylum and provide more information on the circumstances from which people claiming asylum are fleeing.
113. Since ECRI's second report, two main pieces of legislation have been introduced on asylum and immigration matters in the United Kingdom: the Nationality, Immigration and Asylum Act 2002 (NIAA)<sup>49</sup>, which entered into force in 2003, and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (AIA)<sup>50</sup>, which was adopted in September 2004. Concerns have been expressed about some of the measures contained in the NIAA and, in particular: the introduction of lists of designated countries of origin, whereby claims filed by asylum seekers coming from these countries are regarded as "clearly unfounded"; and the abolition of in-country right of appeal for asylum seekers whose claims are regarded by the Secretary of State as "clearly unfounded". Concerns have also been expressed about some of the measures contained in the AIA, notably: an extension of the definition of "safe third countries" (i.e. countries of which the asylum seeker is not a citizen and to which she or he can be removed without substantive consideration of their asylum claim or right of appeal); the reduction of appeal rights for asylum seekers<sup>51</sup>; and the creation of new immigration-related criminal offences, including being unable, without reasonable justification, to show a valid passport or other travel document to an immigration officer. More generally, it has been pointed out to ECRI that recent reviews of asylum legislation have concentrated almost exclusively on ensuring expedition in the processing of asylum applications but these and their accompanying administrative measures have not addressed to any comparable extent the quality of asylum decision-making, an area where civil society organisations dealing with asylum and refugees issues consider that there is an urgent need for improvement.

**Recommendations:**

114. ECRI recommends that the authorities of the United Kingdom ensure that the procedures in force for seeking asylum in the United Kingdom enable those in need of protection to have the merits of their individual cases thoroughly examined and do not put people at risk of being returned to countries in contravention of the principle of *non-refoulement* and Article 3 of the ECHR. To

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<sup>49</sup> See above, Constitutional provisions and other basic provisions – Citizenship legislation

<sup>50</sup> See above, Reception and status of non-citizens – Immigration.

<sup>51</sup> The current two-tier system which consists of a first decision before the adjudicator with appeals before the Immigration Appeal Tribunal is to be replaced with a single-tier procedure before the Asylum and Immigration Tribunal. A further proposal to abolish all existing rights of appeal, including judicial review and statutory review by the higher courts, was dropped.

this end, ECRI recommends in particular that the authorities of the United Kingdom review the provisions currently in force concerning designated lists of countries of origin, in-country right of appeal and removals to “safe third countries”. ECRI also recommends that the authorities of the United Kingdom take measures to improve the quality of asylum decision-making.

115. In its second report, ECRI recommended that the authorities of the United Kingdom review the provisions and arrangements concerning accommodation and support of asylum seekers. In April 2000, the authorities of the United Kingdom launched the National Asylum Support Service, a branch of the Home Office responsible, *inter alia*, for providing support to eligible destitute asylum seekers. Where accommodation is requested, asylum seekers are generally dispersed into cluster areas around the country on a “no choice” basis. Accommodation centres are also to be set up under the NIAA. These centres are meant to serve a dual purpose. Firstly, they should facilitate the processing of asylum claims, by bringing together on one site the relevant key functions, including legal advisers, interpreters, Home Office case workers and officers of the Immigration Service. Secondly, these centres should accommodate and support asylum seekers pending the examination of their claims. Services provided in the centre do not only include accommodation and sustenance, but also health care and education. Concerns have been expressed that the self-contained nature of these centres will further the isolation of asylum seekers from the rest of society and delay the integration of those whose claims will be positively assessed. Of particular concern is the fact that asylum seeker children will be educated in the centres and not together with other children in mainstream schools. Another provision in the area of support of asylum seekers that has given rise to concerns since ECRI’s second report is Section 55 of the NIAA. This Section provides that asylum seekers who do not file their applications “as soon as reasonably practicable” are not eligible for support while their claims are being considered. ECRI notes that in a test case brought by a number of destitute claimants, the High Court ruled in February 2003 that the government’s denial of all support to late asylum claimants breached their fundamental human rights. ECRI understands that an appeal on this matter will be heard before the House of Lords. Further provisions in the area of support of asylum seekers that raise concerns with ECRI are contained in Sections 9 and 10 of the AIA. Section 9, which was implemented in a number of pilot areas on 1<sup>st</sup> December 2004, provides for the withdrawal of support from asylum-seeking families who do not leave voluntarily once their claims are refused and their appeals rejected. ECRI notes that this measure entails the risk of children having to be separated from their families<sup>52</sup>. Section 10 allows the Secretary of State, in some cases, to make support conditional upon the participation in community activities (defined as “activities that appear to the Secretary of State to be beneficial to the public or a section of the public”). ECRI notes that the Joint Committee on Human Rights has considered that there is a serious risk that this measure may contravene Articles 3 and 4 of the ECHR.

<sup>52</sup> Families would be ineligible for support from local authorities under Sections 21 and 29 of the National Assistance Act 1948; support for the elderly under Section 45 of the Health Services and Public Health Act 1968; support from Social Services under the Children Act 1989 or Children (Scotland) Act 1995; accommodation under homeless legislation; promotion of well being under Section 2 of the Local Government Act 2000. However, in the event that a child’s welfare is compromised, support under Section 20 of the Children Act 1989 may be provided, but only to children under 18. Local authorities will not be able to provide accommodation and subsistence to any other members of the household.

**Recommendations:**

116. ECRI recommends that the authorities of the United Kingdom ensure that no asylum seeker is left destitute pending the examination of her or his claim. ECRI also recommends that any measures taken to provide asylum seekers with accommodation and support should not separate asylum seekers from the rest of society and should instead facilitate the early integration of those who will be allowed to stay. In particular, ECRI recommends that children who seek asylum not be educated separately from other children, but be integrated and, if necessary, supported in mainstream schools. ECRI recommends that the authorities of the United Kingdom ensure that these children not be separated from their families, even when the families have failed to comply with removal orders. In this connection, ECRI recommends that this aspect in particular of Section 9 of the AIA be reviewed in the light of experience in the pilot areas. ECRI also recommends that the authorities reconsider the provisions which make support conditional, in some cases, upon the participation in community activities.

117. Noting that many asylum seekers were held in detention without being charged with a criminal offence and that asylum seekers could still be detained at any time, for any reason and with no time limits, in its second report ECRI stressed that asylum seekers, even if their claims are not considered to be valid by the authorities, should not be treated as criminals. ECRI notes that asylum seekers in the United Kingdom can still be detained: for identification purposes; in view of removal; when they are likely to abscond; or when consideration of the asylum claim is expected to be quick. There is no time limit to administrative detention. ECRI notes with regret that, since its second report, the NIAA has repealed the provision for automatic bail hearings for persons in administrative detention, which was introduced by the Immigration and Asylum Act 1999 to provide for greater judicial scrutiny on individual decisions to detain. ECRI also notes that the NIAA changed the designation of detention centres into "removal centres". However, the criteria for detaining persons in these centres have reportedly remained unchanged. In this respect, ECRI notes that there are reports according to which it remains the practice to detain people on arrival as well as prior to removal. ECRI also notes that children, both unaccompanied and with families, may also be and have been in some cases, detained at any stage of the process. ECRI understands that in the case of unaccompanied children, this detention is temporary until they can be taken into the care of social services or in cases where their age is in doubt; in case of family groups, the detention of children happens only when the group itself is being detained. ECRI is pleased to note that in January 2002, the authorities of the United Kingdom discontinued the routine use of prison accommodation to hold some immigration detainees. However, it notes that some reports indicate that people may still be moved into prisons, although it is not clear to ECRI what the precise criteria for this are.

**Recommendations:**

118. ECRI recommends that the authorities of the United Kingdom ensure that detention of asylum seekers is limited to those situations where it is absolutely necessary, and that asylum seekers are not detained in the same facilities as criminals. ECRI also recommends that the authorities ensure that individual decisions to detain are subject to thorough and effective judicial scrutiny. ECRI

further recommends that the authorities of the United Kingdom ensure that the detention of children remains strictly limited to cases where it is absolutely necessary on a temporary basis for their immediate care, or to confirm their age or where they form part of a family group which is itself being detained.

### **The situation of Roma/Gypsies and Travellers**

119. The situation of Roma/Gypsies and Travellers throughout the United Kingdom and across a wide range of areas, including housing, education, employment, health, access to public places and dealings with the criminal justice system is cause for concern for ECRI. All evidence tends to show that Roma/Gypsies and Travellers are among the most disadvantaged and discriminated against ethnic minority groups in the United Kingdom and experience among the most severe levels of hostility and prejudice from society in general. Initiatives to improve the situation of this part of the population of the United Kingdom have been undertaken both by the government and by the non-government sector – for instance, the CRE is implementing a three-year strategy covering all areas mentioned above. However, much more remains to be done in order to bridge the gap and reduce inequalities between Roma/Gypsies and Travellers and the rest of the population.
120. Estimates concerning the size of the Roma/Gypsy and Traveller population of the United Kingdom vary considerably, although many provide a figure of around 300 000, with approximately 200 000 living in settled housing. The uncertainty concerning these figures is, at least in part, connected with the fact that the only official information on the Roma/Gypsy and Traveller population comes from counts based on the number of caravans. These figures therefore only account for the people living in caravans at the time of the count and do not reflect the number of Roma/Gypsies and Travellers living in settled housing.

### ***Recommendations:***

121. ECRI recommends that the authorities of the United Kingdom ensure that Roma/Gypsies and Travellers are included in national and local ethnic monitoring systems. It recommends that the authorities ensure that the Roma/Gypsy and Traveller communities are thoroughly involved in all the aspects concerning the collection of such data.
122. There is general agreement that the housing situation of Roma/Gypsies and Travellers is one of the areas that need to be addressed as a matter of priority, notably in view of the role that the current poor and precarious housing situation plays in the disadvantage experienced by Roma/Gypsies and Travellers in all other areas of life, including education, health and societal prejudice. In its second report, ECRI recommended that the authorities of the United Kingdom ensure that local authorities make adequate provision of public sites for Roma/Gypsies and Travellers throughout the country. Although some local authorities have taken commendable steps in this direction, ECRI notes that there is no obligation for local authorities to provide such sites – an obligation in this sense was removed in 1994 – and no national quality standards. In this connection, ECRI notes that Roma/Gypsies and Travellers who prefer to live in mobile homes are still faced with a serious shortage of suitable sites. Furthermore, ECRI notes that security of tenure for Roma/Gypsies and Travellers on public sites also represents a problem, since inhabitants of these

sites are licensees and not tenants and therefore live under constant threat of eviction. Although the number of Roma/Gypsies and Travellers who live on private sites has increased in the last years, reports indicate that Roma/Gypsies and Travellers who acquire sites of their own find it very difficult to obtain planning permission. As a result of the difficulties encountered in accessing housing that meets their needs, today a considerable part of the non-settled Roma/Gypsy and Traveller population lives on unauthorised camps, often situated in unsuitable locations, where there is no access to basic services and facilities, and becomes as a result particularly vulnerable to hostility from the local population. Whether because of these difficulties or for other reasons, today the majority of the Roma/Gypsy and Traveller population of the United Kingdom live in settled housing. However, there are reports that their specific needs are generally not taken into account in the allocation of social housing. There are also widespread reports of harassment and intimidation of Roma/Gypsies and Travellers by other social housing tenants. ECRI notes that there is increasing awareness within the authorities of the United Kingdom of the need to mainstream Roma/Gypsy and Traveller housing needs in all housing policies. For instance, ECRI notes that the Office of the Deputy Prime Minister has undertaken a review of its policies relating to Roma/Gypsies and Travellers.

#### **Recommendations:**

123. ECRI recommends that the authorities of the United Kingdom ensure that Roma/Gypsy and Traveller needs are mainstreamed in all housing policies both at central and at local levels, including in policies to tackle homelessness. It recommends that the authorities ensure availability of adequate public permanent and transit sites, including, as necessary, by introducing a legal obligation on local authorities to provide such sites. It also recommends that the authorities work to improve security of tenure for Roma/Gypsies and Travellers on public sites. ECRI furthermore recommends that the authorities ensure availability of private sites and tackle any instances of discrimination in the granting of planning permission. ECRI recommends that the authorities ensure that provision of social housing reflect as much as possible the specific needs of Roma/Gypsy and Traveller tenants.
  
124. In its second report, ECRI recommended that the authorities of the United Kingdom address Roma/Gypsy and Traveller education needs, including by mainstreaming Roma/Gypsy and Traveller children in general strategies to improve pupils' achievement and by developing specific policies to ensure admission and attendance of these children in schools. ECRI notes that a number of initiatives have been taken in the field of education by the authorities in England and Wales, in Scotland and in Northern Ireland, as well as by different local authorities. However, ECRI notes that Roma/Gypsy and Traveller children are still very seriously under-represented in pre-school education and in secondary education, and even more seriously under represented in post-secondary education. Roma/Gypsy and Traveller children are generally perceived as low-achievers and there are reports that some schools have been unwilling to register them out of fear of a drop in the school performance table. With rates of attendance being the lowest among all ethnic minority groups, Roma/Gypsy and Traveller children are the group most at risk of failure in the education system. ECRI has been informed of work undertaken in schools in England and Wales to ensure that schools develop and implement general anti-bullying policies. It notes, however, that research carried out in schools in

Scotland indicates that bullying is a major factor in explaining the high drop out rates of Roma/Gypsy and Traveller children there. ECRI also notes that existing opportunities for schools for integrating the teaching of the history or culture of Roma/Gypsies and Travellers in the school curriculum have reportedly been used only rarely.

**Recommendations:**

125. ECRI recommends that the authorities of the United Kingdom address the situation of disadvantage of Roma/Gypsy and Traveller children in education, by targeting specific measures to improve these children's access, attendance and achievement. It recommends, in particular, that the authorities address the issue of bullying in schools throughout the country, and devote particular attention to anti-Roma/Gypsy and Traveller bullying. ECRI also recommends that the authorities of the United Kingdom ensure that existing opportunities for schools for integrating the teaching of the history or culture of Roma/Gypsies and Travellers in the school curriculum are used in practice.
126. The situation of disadvantage faced by Roma/Gypsies and Travellers in education has an obvious impact on their employment possibilities. In addition, there are reports that Roma/Gypsies and Travellers suffer employment discrimination in recruitment and harassment in the workplace. There are also reports that Roma/Gypsies and Travellers make little use of general initiatives or schemes designed for the unemployed. Roma/Gypsies and Travellers also experience disadvantage in the labour market which are linked with the lack of a permanent address, especially as concerns the setting up of private businesses.
127. There are also reported to be wide differences in the health situation of Roma/Gypsies and Travellers compared to that of the rest of the population. Roma/Gypsies and Travellers report difficulties in registering with a General Practitioner or for health care and often only get treatment in emergency departments. There are also reports that many Roma/Gypsies and Travellers suffer from depression and mental health problems.
128. Roma/Gypsies and Travellers are also widely reported to experience discrimination in the criminal justice system. This is reflected especially in the disproportionately high numbers of "stop and searches" which they are subjected to, although there are also reports of inequalities in sentencing, in the granting of bail, and of disproportionately high numbers of remands in custody for young Roma/Gypsy and Traveller offenders. Roma/Gypsies and Travellers also report evictions and seizure of vehicles and unprofessional behaviour on the part of the police during these procedures.
129. Roma/Gypsies and Travellers are reported to be the ethnic minority group which faces the highest level of societal prejudice. By reporting in an often sensational way and using stereotypes and racist language, the media, both print and electronic, have contributed to making prejudice and sometimes outright hostility towards Roma/Gypsies and Travellers, commonplace. This is also reflected in the persistence of "No Travellers" or "No Caravan Dwellers" signs on public establishments in violation of the law.

**Recommendations:**

130. ECRI recommends that the authorities of the United Kingdom take steps to reduce the unemployment rate of Roma/Gypsies and Travellers, including through: measures aimed at increasing their use of general initiatives or schemes designed for the unemployed; measures to ensure better access and take-up of training; and measures to tackle discrimination at point of recruitment and harassment in the workplace. ECRI also recommends that the authorities of the United Kingdom research and address the situation of disadvantage of the Roma/Gypsy and Traveller population as concerns health issues. ECRI furthermore recommends that, in their efforts to raise the awareness of law enforcement officials of the issues around racism and racial discrimination, the authorities of the United Kingdom devote special attention to the need to avoid prejudice and discrimination towards Roma/Gypsies and Travellers.
131. ECRI recommends that the authorities take steps to counter the appearance of “No Travellers” or “No Caravan Dwellers” signs on public establishments, including by implementing the existing legal provisions against discrimination.
132. More generally, ECRI notes that the duty to eliminate racial discrimination, promote equal opportunities and encourage good race relations, which is binding on central and local authorities working across all areas highlighted in this Section (housing, education, health, criminal justice, etc.) constitutes a powerful tool for these authorities to mainstream Roma/Gypsy and Traveller needs in their policies and to ensure long-lasting change as a result.

**Recommendations:**

133. ECRI recommends that the authorities of the United Kingdom ensure that compliance with the duty to eliminate racial discrimination, promote equal opportunities and encourage good race relations include arrangements and outcomes relating to Roma/Gypsies and Travellers.
134. ECRI draws the attention of the authorities of the United Kingdom to its General Policy Recommendation No. 3<sup>53</sup>, which proposes a range of legislative and policy measures governments can take to combat racism and intolerance towards Roma/Gypsies and Travellers. ECRI emphasises in particular its recommendation to “develop institutional arrangements to promote an active role and participation of Roma/Gypsy communities in the decision-making process, through national, regional and local consultative mechanisms, with priority placed on the idea of partnership on an equal footing”.

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<sup>53</sup> CRI (98) 29: ECRI General Policy Recommendation n° 3: Combating racism and intolerance against Roma/Gypsies.

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