

**Written submission of the Secretariat of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe in the context of the preparation of the report, by the UN High Commissioner for Human Rights, on the implementation of Human Rights Council Resolution 47/21 on the “Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers through transformative change for racial justice and equality”, to be presented at the Human Rights Council’s fifty-first session, scheduled to take place in September 2022.**

In addition to the elements previously submitted to the OHCHR, ECRI wishes to present the following information, based on statements and sixth-cycle country monitoring reports published between December 2021 and 14 April 2022 as well as on fifth-cycle country monitoring conclusions published in 2021 and 2022.

In the light of the Four-point Agenda Towards Transformative Change for Racial Justice and Equality (document A/HRC/47/53, Annex), and in particular its point II. 4, information has been included on independent oversight and complaints procedures and mechanisms regarding action by law enforcement. Additional information on these issues can be found in ECRI’s sixth-round country monitoring reports, published before December 2021, under the topic “Effective equality and access to rights – Equality bodies”, available on [HUDOC-ECRI database](#). Information on national legislation and policies aimed at ensuring equality and combating racism, as well as on data collection and on responses to hate speech and hate-motivated violence can also be found in the reports.

## **1. ECRI STATEMENT ON THE CONSEQUENCES OF THE AGGRESSION OF THE RUSSIAN FEDERATION AGAINST UKRAINE**

In the context of its 88<sup>th</sup> plenary meeting (29 March – 1 April 2022), ECRI issued a [statement](#) on the consequences of the aggression of the Russian Federation against Ukraine. With regard to the protection offered to people fleeing from Ukraine, ECRI *inter alia* expressed the trust that reports about unjustified differential treatment of, among others, people of African or Asian descent coming from Ukraine will be effectively investigated and that the authorities will ensure that there is no discrimination against any of the people who should be offered protection and assistance.

## **2. THE NATURE AND SCALE OF ANTI-BLACK RACISM BASED ON ECRI’S SIXTH-ROUND COUNTRY REPORTS, SHORTCOMINGS AND GOOD PRACTICES OBSERVED ON ISSUES CONCERNING THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF AFRICANS AND OF PEOPLE OF AFRICAN DESCENT**

In its previous submission to the OHCHR on the above subject-matter, ECRI compiled extracts from its sixth-round country monitoring reports that contained information indicating the nature and scale of racism and discrimination against persons of African descent and any good practices in place to counter these problems. Such information was found under the following topics: effective equality and access to rights – inclusive education; hate speech; hate-motivated violence; integration and inclusion – migrants; and country-specific topics – including racial profiling and police abuses.

Since then, ECRI has published a new sixth-round country [report](#) on Norway, which contains some relevant findings in relation to racial profiling and the role of the National Equality Bodies in this area, as well as in relation to hate-speech and the responses of the authorities to it.

## A. Equality bodies

(§ 9) ECRI welcomed the establishment of the [Norwegian National Human Rights Institution] NHRI on 1 July 2015 as an independent institution affiliated with the Parliament. (...). ECRI noted that the NHRI has a broad mandate to promote and protect human rights in Norway and to monitor whether the authorities respect their international human rights obligations. ECRI was pleased to note that the NHRI has engaged in several topics of structural and institutional discrimination and encouraged it to get involved even more in issues such as [...] allegations of racial profiling by the police.

## B. Irregularly present migrants

(§ 24) ECRI (...) found that [...] the targets set for the [Norwegian] police to deport high numbers of irregularly present migrants from the country have, according to civil society, triggered a high number of identity checks by the police among migrants that belong to visible ethnic minorities. This policy could be detrimental to their integration and bears the risk of racial profiling.<sup>1</sup>

## C. Hate speech

(§43) In 2020, the Norwegian Supreme Court issued two important decisions on hate speech. In the first case, a 70-year-old woman from Bergen had posted on the Facebook group “We Support Sylvi Listhaug” insulting comments about Sumaya Jirde Ali, an award-winning writer and poet of Somali origin. The offender was finally sentenced under Section 185 of the Criminal Code for hate speech to a conditional sentence and a fine of 25 000 NKR (about 2 500 Euros)<sup>2</sup>. The second insulting statement was made in the Facebook group “Fedrelandet viktigst”<sup>3</sup>; the Supreme Court upheld the sentence for hate speech and the fine of 12 000 NKR. Observers state that these judgments contained the important message that the general limitations to liberty of expression also apply to the Internet<sup>4</sup>.

(§44) The first case also confirms that hate speech poses a serious threat to public debate and democracy. The victim, Sumaya Jirde Ali, was about to annul public interventions after having suffered from additional hate speech in 2018 in particular on the website “Resett”<sup>5</sup>; she changed her mind only after many supporting interventions, including through the Prime Minister<sup>6</sup>. A second example of the devastating effects of hate speech on the political debate is the case of a youth party leader with a migration background who was exposed to hatred and threats during the 2017 campaign for the general elections; the Police Security Service (PST) advised him to keep a lower profile during the final stages of the campaign. A third case concerns a young female politician with a visible migration background. After having been steadily exposed to hatred due to her ethnicity and gender, she had to be put under police protection<sup>7</sup>.

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<sup>1</sup> See in this respect also Solhjell R., Saarikomäki E., Haller M. et al. 2018.

<sup>2</sup> Supreme Court of Norway no. HR-2020-184-A, judgment of 29 January 2020; NRK 2020. The post reads: “Devil’s black offspring, go back to Somalia and stay there you corrupt cockroach”.

<sup>3</sup> The name of this group can be translated as “The fatherland is most important”.

<sup>4</sup> The post in question reads: “It is better that we remove these abominable rats from the surface of the earth ourselves I think !!” and “Yes they will disappear the day these steppe baboons travel where they belong!”, Supreme Court no. HR-2020-185-A, judgment of 29 January 2020; see also VG 2020; Aftenposten 2020.

<sup>5</sup> <https://resett.no/2018/02/24/la-oss-snakke-om-sumaya-jirde-ali-og-stemmene-som-haner-oss/>, accessed on 12.06.2020. Civil society informed ECRI that pre-moderated comments called her a “hooded gull”, “fat cow on welfare benefits” and incited to hatred: “surround her, poor gas over her and light the torches”, Antirasistisk Senter 2018: 17. Concerning hate speech after the attack on mosques in New Zealand in 2019 and the reaction of the Minister of Education when reading these pre-moderated comments see Aftenposten 2019.

<sup>6</sup> Dagbladet 2018.

<sup>7</sup> LDO 2018a: 17.

### **3. LEVEL OF IMPLEMENTATION OF INTERIM FOLLOW-UP RECOMMENDATIONS MADE BY ECRI IN ITS FIFTH-ROUND COUNTRY REPORTS ON ISSUES CONCERNING THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF AFRICANS AND OF PEOPLE OF AFRICAN DESCENT**

Since its fifth-round country monitoring cycle, ECRI identifies, out of the recommendations addressed to each country, two specific recommendations, which are then subject to a process of interim follow-up within two years from the publication of the country report. On the basis of information gathered by ECRI and the responses submitted by the Government concerned, ECRI draws up its conclusions on the way in which these recommendations have been followed up on.

This section compiles extracts from selected fifth-round country monitoring conclusions in respect of interim follow-up recommendations on issues concerning

- Equality bodies
- Racial profiling by law enforcement officials.

In 2021 and 2022 (as of 14/04/2022), relevant conclusions on these issues have been published by ECRI in respect of Spain, the Republic of Moldova, the Russian Federation<sup>8</sup>, Latvia, Romania and Finland.

#### **A) Fifth-round interim follow-up conclusions on Spain (published on 23 February 2021)**

***In its [report on Spain \(fifth monitoring cycle\)](#), published on 27 February 2018, ECRI recommended that the Spanish authorities take urgent steps to set up an independent equality body or to ensure that the Council of Elimination of Racial and Ethnic Discrimination (CERED) be made independent and be provided with the competencies and powers outlined in ECRI's General Policy Recommendations Nos. 2 and 7.***

ECRI was informed by the Spanish authorities that work was underway to improve the quality of a draft Act on Equality of Treatment and against all Form of Discrimination. According to the authorities, this new act would serve as a basis for the creation of an independent equality body with sufficient human and budgetary resources.

The preparatory work for the draft act had been reportedly interrupted by the two snap elections held in 2019 before a Government could be formed in early 2020. Nonetheless, ECRI noted that the coalition Government of Spain had included the preparation of such an act in its coalition agreement.

As regards the Council of Elimination of Racial and Ethnic Discrimination (CERED), its status had not been enhanced and its available human and budgetary resources had not been reinforced since the publication of ECRI's fifth report. As a consequence, ECRI considered that it was still not independent of the Government and that its staffing and budget remain very limited. [...]

ECRI appreciated that the holding of two parliamentary elections within a year in 2019, as well as difficulties caused by the Covid-19 pandemic, had delayed the legislative work on a new Act on Equality of Treatment and against all Form of Discrimination and thereby also the creation of a truly independent and sufficiently mandated and resourced equality body. ECRI looked forward to the adoption of such an act.<sup>9</sup> At the same time, ECRI was obliged to note that there was no time schedule for its preparation and adoption.

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<sup>8</sup> In its [Resolution Res\(2022\)2](#) of 16 March 2022, the Committee of Ministers decided that, in the context of the procedure launched under Article 8 of the Statute of the Council of Europe, the Russian Federation ceased to be a member of the Organisation as from 16 March 2022. As a result of this decision, ECRI no longer monitors racism and intolerance in the Russian Federation as from that date.

<sup>9</sup> Reference should be made in this regard to the recommendation made by ECRI in paragraph 22 of its fifth report.

Consequently, ECRI considered that in that state of affairs, its recommendation had not yet been implemented.

**B) Fifth-round interim follow-up [conclusions on the Republic of Moldova](#)** (published on 18 May 2021)

**1. In its [report on the Republic of Moldova \(fifth monitoring cycle\)](#) published on 2 October 2018, ECRI recommended that the authorities should strengthen the institutional capacity of the Council to Prevent and Combat Discrimination and Ensure Equality (CPPEDAE) and the People's Advocate (the Ombudsman). In this regard, the authorities should, in particular, i) amend the relevant procedural rules to ensure the effective implementation of the mandate of the CPPEDAE, ii) allocate both institutions sufficient financial and human resources, including funding to provide for awareness-raising campaigns, iii) ensure that both institutions maintain their full financial independence from the government, and iv) intensify their efforts to promote compliance with the recommendations of the CPPEDAE and the Ombudsman.**

ECRI noted that there have been no significant changes made to strengthen the institutional capacity of the Council to Prevent and Combat Discrimination and Ensure Equality (CPPEDAE) and the People's Advocate (the Ombudsman) since the publication of ECRI's fifth report. Although a draft bill to consolidate certain prerogatives of the CPPEDAE was issued in 2018, it could not translate into legislation due to the change of government. ECRI was informed that a new legislative proposal was pending.

As concerns the provision of human resources of both institutions, ECRI regretfully noted that no progress was made, and understaffing remained a persistent issue, mostly due to low salaries and high levels of staff turnover. Furthermore, the issue of financial independence of both institutions had still not been resolved and their budgets were dependent on the discretion of the Ministry of Finance, although the legislation requires their approval by Parliament.

Against these considerations, ECRI concluded that this recommendation had not been implemented.

**2. In its [report on the Republic of Moldova \(fifth monitoring cycle\)](#), ECRI recommended that the training activities for law enforcement officials and the judiciary on hate crime, including hate speech, are scaled up. Such training should cover racist and homo-/transphobic hate crime as well as racial profiling. ECRI also recommended that the authorities carry out an impact assessment to evaluate the training to establish to what extent it helps to identify hate crime effectively and to adjust it, if necessary.**

The state authorities informed ECRI that a specialised course on 'the examination and investigation of crimes motivated by prejudice' was included in the curricula of the in-service training for prosecutors and judges at the National Institute of Justice. Furthermore, an OSCE-led training on hate crime for the Joint Law Enforcement Training Centre of the Ministry of Internal Affairs had taken place in December 2020.<sup>10</sup>

ECRI took positive note of the recent establishment of the "Strategic Group for the harmonisation of law enforcement training on hate crimes" (hereafter Strategic Working Group) within the framework of an ongoing Council of Europe project.<sup>11</sup> The Strategic Working Group, which had been operational between October and December 2020, was composed of the representatives of the General Police Inspectorate, the Superior Council of Magistracy, the Police Academy, the Ministry of Justice and the National Institute of Justice and aimed to identify gaps in law enforcement training as well as to enhance the capacity with a view to effectively identify and investigate bias-motivated crimes. To this end, two different sets of training programmes in the format of 'Training of Trainers (ToT)' were

<sup>10</sup> See <https://www.osce.org/mission-to-moldova/473667>.

<sup>11</sup> [Project](#) on 'Strengthening access to justice for victims of discrimination, hate speech and hate crimes in the Eastern Partnership', is part of the Partnership for Good Governance and run by the Inclusion and Antidiscrimination Division of the Council of Europe.

foreseen for 2021: i) training on equality and non-discrimination for police officers in order to reinforce their preventive competences, ii) hate crime training at inter-institutional level, notably for police officers, prosecutors and judges, in order to develop a common understanding of hate crimes within the criminal justice system and an integrated approach to combating them. ECRI was also pleased to learn that a training programme on hate speech for the Security and Intelligence Service, which is tasked with monitoring online hate speech, was being implemented.

While welcoming these steps taken by the authorities, ECRI concluded that the various measures had not yet ensured the proper qualification of hate crimes. The training programmes set out by the Strategic Working Group were still at the inception phase and the impact of these programmes was yet to be assessed. In this regard, ECRI encouraged the Moldovan authorities to continue their efforts to improve the knowledge and expertise among law enforcement officials in recognising hate crime dynamics by making effective use of these training programmes.

ECRI therefore considered that this recommendation had been partially implemented.

C) **Fifth-round interim follow-up conclusions on the Russian Federation**<sup>12</sup> (published on 5 October 2021)

***In its [report](#) on the Russian Federation (fifth monitoring cycle) published on 5 March 2019, ECRI strongly reiterated its recommendation that the authorities set up a body independent of the police and prosecution authorities competent to investigate all complaints against the police, as per § 10 of its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.***

The Russian authorities informed ECRI that they considered control of the police to be already sufficiently carried out by the relevant bodies, in particular the Prosecutor General and subordinate prosecutors, as well as by public associations and bodies, such as the “Public Chamber of the Russian Federation” and public monitoring commissions. The authorities therefore did not think it necessary to implement ECRI’s recommendation.

ECRI regretted this view and underlined the need for a fully independent, professional and trusted police complaints mechanism,<sup>13</sup> which it had already repeatedly recommended.

ECRI concluded therefore that this recommendation had not been implemented.

D) **Fifth-round interim follow-up conclusions on Latvia** (published on 5 October 2021)

***In its [report](#) on Latvia (fifth monitoring cycle) published on 5 March 2019, ECRI recommended that the authorities establish a unit within the State Police tasked with reaching out to vulnerable groups in order to increase trust in the police and address the problem of under-reporting of [inter alia] racist [...] hate crimes.***

The Latvian authorities informed ECRI that in order to reach out to vulnerable groups for the purpose of increasing trust in the police and tackling the problem of under-reporting of [inter alia] racist [...] hate crimes, the Ministry of Interior had opted for a different approach to the recommended establishment of a specialist unit within the State Police, namely that of community policing. The

<sup>12</sup> In its [Resolution Res\(2022\)2](#) of 16 March 2022, the Committee of Ministers decided that, in the context of the procedure launched under Article 8 of the Statute of the Council of Europe, the Russian Federation ceased to be a member of the Organisation as from 16 March 2022. As a result of this decision, ECRI no longer monitors racism and intolerance in the Russian Federation as from that date.

<sup>13</sup> ECRI (2019), Report on the Russian Federation: §§ 92-96.

authorities considered community policing as a legitimate alternative, as both approaches shared the same objectives. Therefore, no specialised unit had been created yet within the State Police.

The Latvian authorities have taken several measures with regard to addressing hate crime, including its incorporation into the curriculum of the State Police College and in non-formal adult education programmes for police officers. They were also planning further activities in the near future, such as the implementation of the project “Capacity Building and Awareness Raising to Prevent Intolerance in Latvia” and the participation of State Police officers in the OSCE/ODIHR anti-hate crime training programme “Words into Action”. While ECRI recognised these efforts, it considered that they were still far from sufficient. More importantly, ECRI did not agree that community policing constituted an acceptable alternative to the creation of a specialised unit within the State Police. Community policing, if implemented effectively, could be a useful measure in addition to the creation of a unit specialised in the handling of [*inter alia*] racist [...] hate crimes, but not an adequate replacement.

ECRI concluded therefore that this recommendation had not been implemented.

E) **Fifth-round interim follow-up conclusions on Romania** (published on 3 March 2022)

*2. In its report on Romania (fifth monitoring cycle), ECRI recommended that the authorities provide further training for police officers, prosecutors and judges on how to deal with racist and homo-/transphobic acts of violence. This should include improved procedures for recognising bias motivations. Furthermore, it also recommended that in order to address the problem of underreporting, the authorities enhance cooperation between the police and vulnerable groups, in particular the Roma and the LGBT community.*

The authorities informed ECRI that further training has been provided with a view to increasing the capacity of law enforcement officials and members of the judiciary on dealing with hate-motivated violence. Among others, within the framework of the project “NoIntoHate 2018”,<sup>4</sup> which had run between October 2018 and March 2020, a total of 144 professionals (96 judges and prosecutors, 24 police officers and 24 gendarmes) benefited from specific modules on hate crime legislation and related case law, including the case law of the European Court of Human Rights. Furthermore, both initial police education and in-service training include subjects related to hate crimes, which are regularly updated. ECRI therefore considers that this part of the recommendation has been implemented.

ECRI understands that the authorities have not yet developed improved procedures for recognising bias motivations and recalls that the proper qualification of hate crimes is imperative for ensuring the effective functioning of the criminal justice system against such acts. In this respect, ECRI notes that the common methodology for investigations into hate crimes, which was expected to be adopted by the Working Group<sup>5</sup> that was set up in 2017, has not been finalised.<sup>6</sup> Regrettably, the Working Group in question no longer holds meetings.

In their communication to ECRI, the authorities recalled that there were dedicated places available for Roma in police academies. However, the authorities have not provided any information regarding specific measures on enhancing cooperation between the police and vulnerable groups, in particular Roma and LGBT communities, to tackle the issue of underreporting. Reports communicated by civil society actors to ECRI suggest that victims remain particularly reluctant to report hate incidents, which is indicative of a lack of progress on the level of cooperation between impacted communities and law enforcement officials. ECRI can only consider that this part of the recommendation has not been followed up.



In view of all the above considerations, ECRI welcomes the efforts made to provide criminal justice actors with training on hate crime. However, it notes that no or little action was taken to address underreporting and in particular to enhance cooperation between law enforcement officials and the communities concerned.

ECRI therefore considered that overall, this recommendation had been partially implemented.

F) **Fifth-round interim follow-up conclusions on Finland** (published on 3 March 2022)

*1) In its report on Finland (fifth monitoring cycle) published on 10 September 2019, ECRI recommended that the National Non-Discrimination and Equality Tribunal should be empowered to deal with complaints of discrimination in employment on all prohibited grounds and not solely on the grounds of gender and gender identity; that the Tribunal should be empowered to grant compensation to victims of discrimination; and that the resources of the Tribunal should be substantially increased to enable it to fully carry out its mandate.*

Since ECRI made its recommendation in 2019, no changes have been made to the mandate and powers of the National Non-Discrimination and Equality Tribunal (NDET). According to the information ECRI received from the Finnish authorities, a working group for the partial reform of the Non-discrimination Act and its provisions dealing with discrimination in employment was appointed on 4 June 2021, with a view to completing its work by 31 May 2022. The working group's task is to identify and assess any problems and necessary changes in the effectiveness of the Non-discrimination Act and other regulations related to it, including the possibility to grant the NDET the right to award compensation to victims of discrimination.<sup>3</sup>

With regard to the resourcing of the NDET, ECRI notes that following a sharp rise in applications during 2018 and the resulting increase in average processing time from 243 days in 2018 to 352 days in 2019 and up to 515 days in 2020, the NDET temporarily received one additional staff member for the period from January 2021 to January 2022. While this has helped to bring the average processing time down to 454 days as of spring 2021, ECRI expresses its concern about the fact that this temporary staff increase will not be continued in 2022 and that the NDET resources will instead revert back to 2017 levels. In this context, it is noteworthy that the Deputy Chancellor of Justice, following a complaint received in 2019, considered in his decision of 20 June 2019 that the processing times for applications to the NDET should not be more than one year.

ECRI concluded therefore that this recommendation had not been implemented.