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ECRI REPORT ON GERMANY

(fourth monitoring cycle)

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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.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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 provide, if they consider it necessary, comments on 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 fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 19 December 2008 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.

SUMMARY

Since the publication of ECRI's third report on Germany on 8 June 2004, progress has been made in a number of fields covered by that report.

The new General Equal Treatment Act (AGG) came into force on 18 August 2006. Its purpose is to prevent or to put an end to discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. The AGG extends protection against discrimination on the basis of all of the grounds covered to a number of private-law fields as well as to public employment. It sets out the manner in which victims of discrimination may enforce their rights, and establishes a Federal Anti-Discrimination Agency entrusted with dealing with individual complaints, raising public awareness, taking measures to prevent discrimination and carrying out academic research into discrimination.

In the field of criminal law, the authorities have been active in investigating and prosecuting members of neo-Nazi groups. Section 130 of the Criminal Code was strengthened in March 2006, with respect to the expression of racist views at public gatherings. The number of demonstrations by neo-Nazi organisations is reported to have decreased in 2007 thanks to this change. Section 129 of the Criminal Code has also been successfully used to sentence the members of a right-wing extremist music group. Successes in fighting racist, xenophobic or antisemitic speech on the internet have also been achieved.

The German authorities regularly condemn antisemitic crimes, pursue perpetrators and bring them to justice where possible. At same time, a wide range of measures are taken to atone for the past and ensure remembrance of the victims of the Holocaust. ECRI salutes the authorities' commitment to denouncing and combating all forms of antisemitism and to supporting Jewish culture in Germany, although it notes that, with antisemitic crimes apparently on the rise at present in Germany, even more intensive efforts may be needed to reverse such a trend.

Beyond prosecuting individual offences, the authorities have adopted a range of measures aimed at fighting right-wing extremist, xenophobic and antisemitic crimes. These include supporting victims, assisting perpetrators to break out of extremist groups and seeking to prevent young people from going down the path of extremist activity. The police are also taking an increasingly active role in working to prevent racist, xenophobic and antisemitic crime. Local programmes continue to be funded, although some on only a short-term basis. At the time of writing, debates were also occurring on the possibility of introducing racist motivations as a specific aggravating circumstance under section 46 of the Criminal Code.

In recent years the authorities have expressly recognised that Germany is a country of immigration and have begun to develop a strong new focus on integration, aiming to help immigrants to master German and encourage them to participate fully in society. The new National Integration Plan has as its cornerstone the provision of integration courses for adult migrants, primarily focused on language learning. Successful participants in integration courses are eligible to apply for naturalisation earlier than other non-citizens. The National Integration Plan also includes measures in other fields, such as efforts to promote innovative television programmes with an integration approach.

The German authorities have taken a number of measures to eliminate inequalities or discrimination in the field of education and employment. These include efforts to promote and foster the linguistic abilities of children from the very earliest stages, as a key means of improving their school outcomes overall. At the same time, preventive

measures against exclusion and discrimination on the labour market and in society are the focus of the "XENOS – Integration and Diversity" programme, to run from 2007 to 2013.

As regards the situation of minority groups, the creation of the German Islam Conference is an important symbol of change. The goal of the Conference is to promote inclusive and constructive forms of community, and to ensure better integration of Muslims in Germany. It is intended to show that Muslims have become a part of German society, to counteract segregation of Muslims in Germany, and to prevent Islamism and extremism. In 2008, the election of a German of Turkish origin as one of the leaders of a German political party was also hailed as a landmark event. The state has also taken welcome steps to recognise officially the suffering experienced by Roma and Sinti communities during the Holocaust.

Since ECRI's third report, provisions have been enacted that have made it possible for persons who have been living in Germany with tolerated status for some years to be granted a trial residence permit. Recognised refugees are now allowed to choose where they reside.

ECRI welcomes these positive developments in Germany. However, despite the progress achieved, some issues continue to give rise to concern.

Since ECRI's third report, asylum-seekers and members of the Jewish, Black and Sinti/Roma communities have continued to be targeted in violent racist, xenophobic and antisemitic attacks. ECRI is concerned that, due to the narrow understanding of racism that currently prevails in Germany, unless the perpetrators of crimes are clearly identifiable as members of right-wing extremist groups or sympathisers of such groups, crimes based on racist motivations may not always be investigated or prosecuted as such. The absence of a precise reference in the Criminal Code to racist motivations as an aggravating circumstance for ordinary offences may also contribute to this phenomenon. In addition, the lack of an independent investigation mechanism to deal with complaints against the police may give rise to increased speculation as to a possible racist context, in particular in cases where members of visible minorities have died while in police custody.

The success in local and regional elections of certain parties expressing racist, antisemitic or revisionist views is worrying, and support for such parties has increased in recent years. At the same time, and despite the considerable efforts of the authorities to combat racism, xenophobia and antisemitism and promote a tolerant society, incidents of hate speech continue to occur, including racist propaganda on the internet, and neither the prevalence of racist expression on the internet nor the number of Neo-Nazis and other right-wing extremists appear to have decreased.

While the enactment of the AGG is a welcome step forward in ensuring that victims of discrimination have justiciable rights in Germany, some aspects of the AGG, in particular as regards its application to the field of housing, may leave room for improvements. The AGG remains largely unknown among potential victims and the time-limit of 2 months for initiating a complaint may be too short. This issue is compounded by the limited role afforded to NGOs under the law. At the same time, the Federal Anti-Discrimination Agency is perceived as distant from victims and lacking an understanding of their perspective; and, with a relatively small staff and annual budget, would for the moment appear to have relatively few resources to carry out its statutory tasks.

In daily life, children with a migration background continue to have significantly lower chances of success in the school system than other children, and some teachers are reported to display discriminatory attitudes in the classroom, in particular towards Turkish and Muslim children. This is of particular concern given the central role played by teachers in Germany in directing students towards the different streams of

secondary education. At the same time, the employment rate of immigrants remains significantly lower than that of native-born Germans and in the labour market, and visible differences are reportedly a significant factor in discrimination in access to employment. In the housing sector, discriminatory practices of landlords and property managers are reported, and studies indicate that migrants are disadvantaged in this sector, in some cases facing so-called “ghettoisation”.

Discrimination in daily life is reported by members of the Muslim, Turkish, Black and Sinti/Roma communities. With regard to the exercise of the Muslim faith, the construction of mosques has often been surrounded by controversy and Muslim women report that, since laws were passed in certain *Länder* banning the wearing of headscarves in all or some parts of the public sector, it has also become increasingly difficult for women who choose to wear a headscarf to find employment in the private sector. Since the events of 11 September 2001, Muslims report that they have also increasingly been identified with crimes, and more specifically with terrorism. At the same time, members of the Black community continue to be especially vulnerable to racist violence. Black persons report that there are “no-go areas” in some *Länder* to which they avoid going alone, or avoid going altogether.

While significant improvements have been introduced since ECRI’s third report with respect to asylum applications, some concerns remain with respect to expedited airport procedures. ECRI is also concerned that some persons with refugee status may see this status prematurely terminated, and that restrictions on freedom of movement of asylum-seekers may place the latter in situations of undue hardship.

With respect to integration courses, the investment of resources in the National Integration Plan is noteworthy. ECRI is concerned, however, that the possibility of imposing sanctions on persons obliged to attend integration courses if they fail to attend sufficiently regularly may have a stigmatising effect. It is also concerned that such sanctions may be damaging to individuals’ rights, as they may lead to a refusal to extend a residence permit or to a reduction in welfare payments. At the same time, and while the introduction of a single, national, transparent test is a clear improvement on the previous situation, the introduction of naturalisation tests is an additional process applicable to those who wish to obtain German citizenship and is seen by some NGOs as sending an underlying message of exclusion rather than inclusion. ECRI is also concerned that some non-citizens may be discouraged from seeking to acquire German citizenship through naturalisation due to the requirement that they relinquish their present nationality, with the flow-on effect that they are prevented from participating effectively in German political life.

In this report, ECRI recommends that the German authorities take further action in a number of areas; in this context, it makes a series of recommendations including the following.

ECRI strongly recommends that the German authorities make specific provision in the criminal law for racist motivations for ordinary offences to constitute an aggravating circumstance. It also recommends that the German authorities intensify their efforts to provide training to police officers, prosecutors and judges on issues pertaining to the implementation of criminal legislation addressing racism and racial discrimination.

ECRI recommends that the German authorities keep under review the impact of the AGG in preventing and sanctioning discrimination, and revise the legislation if necessary. It also recommends that the authorities ensure that sufficient resources are available to the Federal Anti-Discrimination Agency to enable it to carry out its current and any future tasks.

ECRI strongly recommends that the German authorities take a more proactive role in raising awareness of the legal framework now in force against racial discrimination, notably among groups who are especially vulnerable to this phenomenon. To this end,

ECRI recommends that the authorities run an awareness-raising campaign specifically targeted at ensuring that potential victims of racial discrimination are aware of the existence and scope of the General Equal Treatment Act (AGG) and of the mechanisms for invoking their rights before the courts.*

Bearing in mind that no immediate move away from the present streaming system for secondary schooling in Germany has been envisaged, ECRI recommends that the German authorities take urgent steps to implement targeted training programmes to ensure that all teachers have the capacity to assess objectively the skills of students due to enter the secondary school system, in order to ensure that students are not sent to schools in the lower academic streams unless this is strictly necessary.*

ECRI strongly encourages the German authorities to continue and intensify their efforts to ensure that no children suffer disadvantage in the school system due to inequalities in their linguistic skills in German. It recommends that the authorities step up the provision of training programmes to teachers and other school staff, in order to equip them to work effectively in increasingly diverse classrooms.

ECRI strongly recommends that, as part of their ongoing efforts towards creating a workplace free of racism, the German authorities launch an awareness-raising campaign aimed specifically at changing employers' attitudes towards persons with an immigrant background. This campaign should focus not only on employers' obligations and liabilities under the new General Equal Treatment Act (AGG) but also on the positive aspects of diversity in the workplace. It could form part of a regular series of such campaigns.*

ECRI encourages the German authorities in their efforts to ban organisations which resort to racist, xenophobic and antisemitic actions and propaganda, to intensify their efforts to counter racist, xenophobic and antisemitic activities on the internet, and to implement measures aimed at ensuring the media are better equipped to deal with the diversity of present-day German society.

ECRI makes a series of recommendations to bolster the fight against racist, xenophobic and antisemitic violence, and encourages the German authorities to pursue their efforts to take a more comprehensive approach to this phenomenon.

With respect to minority groups, ECRI strongly recommends that the German authorities intensify their efforts to combat and prevent racism and discrimination vis-à-vis Muslims in Germany effectively. It also recommends that further steps be taken to improve the situation of Roma and Sinti in Germany, in consultation with representatives of these communities. ECRI also makes a series of recommendations concerning the situation of asylum-seekers.

ECRI strongly encourages the German authorities in their efforts to assist migrants to learn German and recommends that the authorities develop further other aspects of the National Integration Plan, such as programmes to help German citizens be more receptive to the diversity of contemporary German society.

ECRI reiterates its call for the establishment of an independent investigatory mechanism which can carry out enquiries into allegations of police misconduct and, where necessary, ensure that the alleged perpetrators are brought to justice.

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and Implementation of Legal Provisions

International legal instruments

1. In its third report, ECRI recommended that Germany ratify as soon as possible Protocol No. 12 to the European Convention on Human Rights.
2. Germany has not yet ratified Protocol No. 12 to the ECHR. The authorities have indicated that discrimination is prohibited under German law, in accordance with section 3 of the Basic Law (Constitution) and with the General Equal Treatment Act 2006, and that ratification should therefore not have direct consequences in Germany. However, the inclusion of the criterion of national origin in Protocol No. 12 may not correspond to the existing situation in Germany, and the authorities have stated that they will await rulings on this point from the European Court of Human Rights, regarding other member states, before proceeding with ratification. ECRI recalls that Protocol No. 12 is one of the most important international instruments for combating racial discrimination, and that its ratification would make it possible to combat this phenomenon more effectively at national level.
3. ECRI urges Germany to ratify Protocol No. 12 to the European Convention on Human Rights.
4. In its third report, ECRI also recommended that Germany ratify the Additional Protocol to the Convention on Cybercrime and the European Convention on Nationality. It called on Germany to sign and ratify the Revised European Social Charter, the Convention for the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
5. ECRI welcomes the ratification by Germany, on 11 May 2005, of the European Convention on Nationality, which came into force in Germany on 1 September 2005.
6. Germany signed the Revised European Social Charter on 29 June 2007; the Federal Ministry of Labour and Social Affairs has initiated the formal scrutiny procedure for ratification, and ratification is planned for a later date, following a comprehensive process of coordination on content with the relevant government agencies. Germany has also signed but not yet ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. The authorities have indicated, however, that they consider that German law complies with its provisions and that they intend to ratify the Protocol at the same time as they implement the EU Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.
7. No steps have been taken towards signing the Convention for the Participation of Foreigners in Public Life at Local Level and it does not appear from the information provided by the authorities that there is any intention to sign this Convention in the near future. Likewise, there has been no progress towards signing the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. ECRI stresses that these two conventions may make important contributions to the fight against racism and racial discrimination.

8. ECRI strongly encourages Germany to ratify as soon as possible both the Revised European Social Charter and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems.
9. It reiterates its call for the signature and ratification by Germany of the Convention for the Participation of Foreigners in Public Life at Local Level. ECRI also reiterates its recommendation that Germany sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Citizenship law

10. As from 1 January 2000, the principle of *jus soli* was introduced into German law in so far as children born in Germany to non-German parents as from that date have acquired German citizenship automatically at birth, provided that at least one of their parents has lived legally in Germany for at least eight years and has the right of permanent residence. In such cases, the child must, however, choose between German citizenship and the citizenship of his/her parents before reaching the age of twenty-three. Other foreigners who are unable to surrender their previous nationality, or for whom that would prove particularly difficult, no longer need to surrender their previous nationality in order to acquire German citizenship.
11. In its third report, ECRI encouraged the German authorities in their efforts to facilitate the acquisition of German citizenship by long-term residents and persons born in Germany. It recommended that the German authorities continue public debate in view of the adoption of a more flexible approach to dual nationality, and encouraged them to examine the application, in practice, of the criteria for naturalisation in order to address any possible patterns of excessively restrictive application of such criteria or of direct or indirect discrimination on grounds of race, colour, religion, nationality and national or ethnic origin.
12. Since ECRI's third report, the Nationality Act has again been amended, in particular as regards the naturalisation of long-term residents. As from the entry into force of the amendments on 28 August 2007, Germany no longer requires that nationals of the other Member States of the European Union or Swiss nationals surrender their previous nationality upon naturalisation. For these persons, it is therefore no longer necessary to first obtain permission to retain their previous nationality should they wish to keep it when acquiring German citizenship. German nationals also do not lose their German nationality if they acquire the nationality of one of these states.
13. These more relaxed conditions do not apply to individuals holding a nationality other than that of another EU member state or Swiss nationality, however. ECRI is concerned that many non-citizens who may fulfil the requirements for acquiring German citizenship through naturalisation may be discouraged from doing so due to the requirement that they relinquish their present nationality, with the flow-on effect that they are prevented from participating effectively in German political life. On the impact of the requirement that applicants for naturalisation demonstrate sufficient knowledge of the German language, see further below.¹
14. In Germany, the practical application of naturalisation criteria is controlled by the competent ministers of the interior of the *Länder*. Following the introduction by certain *Länder* of tests that applicants were required to pass in order to obtain citizenship, the contents of which were the subject of some debate in Germany,

¹ See below, *Vulnerable/Target groups – Situation of migrants, asylum-seekers, [etc] – Integration*.

the Standing Conference of Ministers of the Interior of the *Länder* decided to introduce a uniform test, to be applied throughout Germany as from 1 September 2008. The contents and impact of the introduction of this test are examined in more depth elsewhere in this report.²

15. ECRI recommends that Germany facilitate the acquisition of German citizenship for all long-term residents and persons born in Germany in order to promote the integration of those residents who may wish to acquire German citizenship without relinquishing their own.

Criminal law provisions against racism

16. As described in ECRI's third report, section 130 of the German Criminal Code prohibits incitement to hatred and violence against segments of the population (§ 130.1), including through the dissemination of publications or broadcasts (§ 130.2). This section also prohibits the approval, denial or playing down of the genocide committed under the National Socialist regime (§ 130.3), including through the dissemination of publications (now covered by § 130.5). The dissemination and use of symbols of unconstitutional organisations is prohibited under section 86a of the Criminal Code, and Section 86 prohibits the dissemination of propaganda of unconstitutional organisations. Section 85 prohibits the continuation of the activities of an organisation that has been banned. Section 46 of the Criminal Code contains a list of circumstances to be taken into account in sentencing offenders, which include the motives and the aims of the offender. Racist motivations are not explicitly listed as an element to be taken into account as a specific aggravating circumstance in sentencing.
17. In its third report, ECRI recommended that the German authorities keep under close review the effectiveness of the existing criminal law provisions in the areas covered by ECRI's mandate. It encouraged the German authorities to examine the extent to which existing criminal legislation enabled the criminal justice system to bring to light the racist dimension of offences, and recommended that the German authorities explicitly provide in law that racist motivations constitute an aggravating circumstance for all offences.
18. At the time of writing, debates were occurring, at the initiative of civil society and certain *Länder*, on the possibility of introducing racist motivations as a specific aggravating circumstance to be taken into account under section 46 of the Criminal Code. The German authorities have indicated that, while they share the objective of punishing racist crimes, they remain unconvinced that such a step would be useful. They have underlined in particular that racist motivations can already be taken into account within the general formulation of section 46, and that they consider that placing the accent specifically on racist motivations might disturb the balance of elements to be taken into account by judges when sentencing offenders, and might be seen as diminishing the importance of other relevant motivations and factors. Moreover, for offences defined under section 130 of the Criminal Code, the authorities consider that motivations such as racist motivations are an integral part of the offence; taking account of them again as an aggravating circumstance under section 46 in such cases would therefore amount to counting them twice. ECRI stresses that, in line with its General Policy Recommendation No. 7,³ the principle of taking account of racist motivations as an aggravating circumstance applies only to ordinary offences, i.e. offences, such as physical assault, in which the racist element is not already an integral part of

² See below, *Vulnerable/Target groups – Situation of migrants, asylum-seekers, [etc] – Integration*.

³ See ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, § 21, as well as § 47 of its explanatory memorandum.

the offence. The principle is not designed to apply to provisions such as section 130 of the Criminal Code.

19. NGOs have, however, voiced considerable concern that, as the law stands, racism is understood only in its strongest forms, and in particular as a manifestation of right-wing extremism. ECRI has repeatedly heard that other, less obviously extreme manifestations of racism tend to be neglected as such in the criminal process. As a result, members of visible minorities feel that only offenders who are identifiably members or sympathisers of right-wing extremist groups are likely to be pinpointed in the criminal justice system as authors of racist acts, with the result that some racist offences are not treated as such at all.⁴ ECRI is particularly concerned that the absence of a precise reference in the Criminal Code to racist motivations as an aggravating circumstance for ordinary offences may contribute to this phenomenon, as neither police nor prosecutors nor judges have any explicit legal basis on which to look beyond extremist motivations in their investigations, the charges they bring or the judgments they deliver. Moreover, a failure to take due account in practice of offenders' racist motivations may leave Germany at risk of breaching the European Convention on Human Rights. ECRI draws the German authorities' attention to the consistent case-law of the European Court of Human Rights in this field.⁵
20. Concerns have also been expressed that, although the definition of crimes contained in sections 86a and 130 of the Criminal Code may provide a basis for prosecuting crimes committed via racist propaganda on the internet, incidents of hate speech continue to occur, including racist propaganda on the internet.⁶ Efforts to prevent such racially motivated offences and ensure that the relevant legislative provisions are effectively implemented continue to be needed.
21. As regards the expression of racist views at public gatherings, in March 2006, §130.4 of the Criminal Code was strengthened. It now provides that a person who publicly or in a gathering disturbs the public peace by harming the dignity of the victims of the Nazi regime or who approves, glorifies or justifies the genocide committed under the Nazi regime can be sentenced to imprisonment for up to three years. This section applies in particular to memorial places of Holocaust victims. According to the Ministry of the Interior, the number of demonstrations by neo-Nazi organisations clearly decreased in 2007 (down from 126 in 2006 to 66 in 2007), thanks to the intensified application of §130.4 of the Criminal Code. The authorities have also referred to section 129 of the Criminal Code, which prohibits forming, being a member of, recruiting members to or supporting organisations of which the aims or activity are directed towards the commission of crimes. This provision was successfully used to sentence the members of a right-wing extremist music group that sought to use their band as a political instrument and to stir up hatred.
22. ECRI strongly recommends that the German authorities make specific provision in the criminal law for racist motivations for ordinary offences to constitute an aggravating circumstance, taking account of the recommendations contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.⁷

⁴ See also below, *Racist violence*.

⁵ See notably *Šečić v. Croatia*, Application no. 4357740116/02, 31 May 2007, § 67; *Anguelova and Iliev v. Bulgaria*, Application no. 55523/00, 26 July 2007, § 115.

⁶ See below, *Racism in public discourse*.

⁷ See ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, § 21, as well as § 47 of its explanatory memorandum.

23. It also recommends that the German authorities intensify their efforts to provide training to police officers, prosecutors and judges on issues pertaining to the implementation of criminal legislation addressing racism and racial discrimination, in order to ensure that all offences with racist motivations, whether or not they fall into the category of extremist crimes, are properly identified and dealt with as racially motivated offences. It further recommends that lawyers be given the opportunity to receive training on these matters.

Civil law provisions: the General Equal Treatment Act

24. In its third report ECRI encouraged the German authorities to adopt anti-discrimination legislation in all key fields of public life, and to ensure that victims of racial discrimination would be granted the highest level of protection. A certain level of resistance to such legislation first had to be overcome within Germany, however, with some politicians regrettably considering such legislation would simply lead to increased bureaucracy or needless and expensive litigation.
25. In 2006, however, the Parliament enacted the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*, AGG), which came into force on 18 August 2006. The AGG constitutes the transposition into German law of several EU equal treatment directives.⁸ The purpose of the Act, as defined in section 1, is “to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation”. ECRI draws the authorities’ attention to the fact that two important grounds included in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination do not appear to be covered by this list: namely, language and nationality. As regards the scope of application of the AGG, it covers the fields of employment, vocational guidance and training, membership in workers’ and employers’ organisations, social protection and social benefits, education, and access to and the supply of goods and services, including housing. It sets out the manner in which victims of discrimination may enforce their rights, and establishes a Federal Anti-Discrimination Agency entrusted with dealing with individual complaints, raising public awareness, taking measures to prevent discrimination and carrying out academic research into discrimination.⁹ The AGG is essentially applicable to private-law relationships; except in the field of public-law employment relationships (covered by section 24 of the AGG), persons who consider they have been discriminated against by public authorities must continue to rely on the general prohibition on discrimination laid down by Article 3 of the Constitution (Basic Law).
26. ECRI welcomes the enactment of the AGG, which constitutes a significant step forward in ensuring that victims of discrimination have justiciable rights in Germany. It notes that, as finally enacted, the AGG goes further than the EU directives in some respects, in particular in so far as it does not confine protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation, to the sole field of employment, but extends protection against discrimination on the basis of all of the grounds covered to a number of other fields. While section 9 of the AGG does provide for a permissible difference of treatment on the grounds of religion or belief, where such grounds constitute a justified occupational requirement for a particular religion or belief, this provision has so far been interpreted narrowly. Thus, the Hamburg Labour Court ruled in December 2007 that a German evangelical social welfare organisation which aids

⁸ Of specific relevance to ECRI’s terms of reference are Council Directives 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and 2000/78/EC, establishing a general framework for equal treatment in employment and occupation.

⁹ On the role and powers of the Federal Anti-Discrimination Agency, see further below, *Anti-Discrimination Bodies and other institutions*.

immigrants had discriminated against a German citizen of Muslim faith when it refused to hire her as an integration counsellor for immigrants. The court found that the rejection of the applicant constituted a discriminatory act since in this context religious faith could not be interpreted as a genuine occupational requirement for the job.¹⁰

27. The text as enacted may nonetheless leave room for improvements. As regards the scope of the Act, two aspects in particular give rise to concern. First, section 19(3) of the AGG expressly allows for differential treatment in the case of rental or housing where it serves to create and maintain stable or balanced social structures or settlement structures. While the authorities have stressed that this provision is intended to ensure integration, that it only applies to landlords owning at least 50 rental units and that in practice, no complaints have so far been lodged by persons having been refused housing on the basis of the provision, ECRI shares the concerns voiced by both civil society and international actors regarding the possible negative effects of including, in the very Act intended to give effect to the prohibition of discrimination, a provision expressly allowing differential treatment on the basis of all the protected grounds, including racial or ethnic origin. ECRI observes that positive measures intended to compensate for disadvantage are already provided for under section 5 of the AGG and that the precise scope of section 19(3) is therefore all the harder to grasp.
28. A second question concerns the applicability of the AGG to the field of education. Whereas it is clear that private schools are subject to the provisions of the AGG, it appears that public (state-funded) schools are not. As it is the *Länder*, in the German federal system, that are competent in the field of education, it will be up to each *Land* to ensure that the prohibition on discrimination in this field is made effective in practice. In this context, ECRI stresses that education has a fundamental impact on children's future life choices and that – bearing in mind the current inequalities in school outcomes in Germany¹¹ – it is all the more urgent that discrimination be eliminated in this field.
29. Two important obstacles to the use of the AGG by victims of racial discrimination have also been identified. First, although racial discrimination remains a significant phenomenon in daily life,¹² the existence, scope and purpose of the AGG remain largely unknown, including among potential victims from this group. According to a recent study, 56% of persons surveyed considered that discrimination on the grounds of ethnic origin was widespread (compared with 23% who considered discrimination on the grounds of gender to be widespread); in the same study, 16% of persons surveyed reported having seen someone being discriminated against or harassed on the grounds of their ethnic origin, and 8% on the grounds of their religion or belief (compared with 5% reporting having witnessed someone being discriminated against or harassed on the grounds of their gender). Yet only 26% of persons surveyed stated that they knew their rights if they were victims of discrimination or harassment, and only 29% were aware of the existence of a law prohibiting discrimination on the basis of ethnic origin by employers when hiring new employees.¹³ Moreover, the Federal Anti-Discrimination Agency itself reports that only 14.5% of cases it dealt with between August 2006 and December 2008 concerned discrimination on the grounds of ethnic origin, and a total of 2.88% on the grounds of belief or religion

¹⁰ Decision of 4 December 2007, no. 20 Ca105/07. This decision was subsequently overturned by the Hamburg Regional Labour Court (decision of 29 October 2008, no. 3 Sa 15/08), on unrelated grounds, namely that the professional qualifications of the plaintiff did not meet the requirements specified in the vacancy notice.

¹¹ See further below, *Discrimination in Various Fields – Education*.

¹² See further below, *Discrimination in Various Fields*.

¹³ Discrimination in the European Union Report (2007) – Special Eurobarometer 263.

– compared with 24.84% on the basis of gender, 26.24% on the basis of disability and 19.75% on the basis of age. As regards court proceedings, the majority of case-law to date concerns discrimination on the grounds of age or disability; at the time of writing, only two judgments were known to have been delivered in cases concerning discrimination on the grounds of ethnic origin. This discrepancy between the proportion of instances of discrimination on the grounds of ethnic origin, religion or belief observed and the proportion of cases actually reported would seem to point to a lack of awareness amongst victims or potential victims of racial discrimination of the existence and scope of the AGG. Against this background, the information that the Anti-Discrimination Agency has recently published information on the internet in Arabic, English, French, Polish, Russian, Spanish and Turkish, in addition to German, is welcome.

30. A further obstacle frequently referred to by NGOs active in the anti-discrimination field is the time-limit of 2 months for initiating a complaint laid down by sections 15(4) and 21(5) of the AGG. The authorities have indicated that in all cases, complainants then have three months in which to lodge a claim with a court. ECRI is concerned, however, that the initial two-month period may be too short. It emphasises that, as described above, many victims, in particular where discrimination on the grounds of their ethnic origin is at stake, remain unaware of the existence of the AGG, or of their rights under it. Moreover, victims may not immediately know where to turn for advice, and may initially be reluctant to raise the issue, or unable to do so because they do not uncover important information until after the deadline has expired. This issue is compounded by the limited role afforded to NGOs under the law, which, as ECRI understands it, may provide legal advice to victims but may not represent them in court. ECRI stresses in this context that in order for the AGG to be effective in practice, it must not only be widely known by the general public, but also provide effective relief to victims when discrimination does occur.
31. As noted above (§ 24), the enactment of the AGG sparked considerable debate in Germany, some of it hostile. While this did not in the end prevent the enactment of a text that in many respects corresponds to the key elements contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, it seems that suspicion towards the AGG still exists. A striking example is one law firm's free internet service, to which employers who are the subject of a claim on the basis of the AGG can turn in order to find out whether the claimant in their case has lodged similar claims previously. Amongst the express aims of the site is that of preventing individuals from making serial claims under the Act with the sole purpose of milking employers for money. Not only may the existence of such a website deter some victims from making legitimate complaints; it also shows that even among lawyers, understanding of the need for effective legislation against discrimination is not universal. ECRI notes with interest that the Data Protection Commission of Baden-Württemberg (where the law firm is based) has intervened to put an end to this service, and that the case is currently pending.
32. ECRI observes that, in its General Policy Recommendation No. 7, it recommends that the law explicitly prohibit discrimination on the grounds not only of race, colour, religion, or national or ethnic origin but also of language or nationality. ECRI considers that, even though these latter grounds may in many cases be covered within the existing grounds, including these elements as part of the AGG would be useful, for example to counter the reportedly continuing practice of advertising jobs reserved to mother-tongue German speakers only.¹⁴

¹⁴ See below, *Discrimination in Various Fields – Housing*.

33. ECRI recommends that the German authorities incorporate in the relevant anti-discrimination legislation all of the grounds referred to in ECRI's General Policy Recommendation No. 7, in order to ensure that the highest level of protection is afforded to victims of racial discrimination.
34. ECRI strongly recommends that the German authorities take a more proactive role in raising awareness of the legal framework now in force against racial discrimination, notably among groups who are especially vulnerable to this phenomenon. To this end, ECRI recommends that the authorities run an awareness-raising campaign specifically targeted at ensuring that potential victims of racial discrimination are aware of the existence and scope of the General Equal Treatment Act (AGG) and of the mechanisms for invoking their rights before the courts.
35. ECRI encourages the authorities to ensure that information in languages other than German concerning the content and scope of the legal framework for combating racial discrimination is distributed as widely as possible. It recommends that NGOs, lawyers and other interested parties such as employers and employment agencies be involved in this process.
36. ECRI further recommends that the German authorities keep under review the impact of the new legislation in preventing discrimination and in ensuring that it is effectively sanctioned when it does occur. In this respect, ECRI recommends that the authorities scrutinise particularly closely the manner in which the provisions concerning housing, education and legal representation are applied in practice, and revise them if necessary.

Anti-discrimination bodies and other institutions

- *Federal Government Commissioner for Migration, Refugees and Integration*
37. The Federal Government Commissioner for Migration, Refugees and Integration is responsible for combating discrimination against foreigners, and has competence to deal with and assist in individual cases within the framework of the AGG. The Commissioner's key tasks include dealing with racial discrimination and discrimination on account of ethnic origin and the elimination of structural forms of discrimination. The Commissioner also has lead responsibility for the coordination of the National Integration Plan.¹⁵
 38. In 2005 the Federal Government assigned the office of the Federal Government Commissioner for Migration, Refugees and Integration to the Federal Chancellery, thereby highlighting the importance attached to integration policy. At the same time, the Commissioner was also given permanent access to the Cabinet. The Commissioner is in regular contact with the Commissioners for Integration and the Commissioners for Foreigners' Issues of the *Länder* and the local authorities, and supports them in their work.
- *Federal Anti-Discrimination Agency*
39. In its third report, ECRI encouraged the German authorities to establish a specialised body to combat racism and racial discrimination at national level and to take into account in this respect its General Policy Recommendations Nos. 2 and 7.
 40. Since ECRI's third report, a Federal Anti-Discrimination Agency has been set up under the AGG. In addition to the Agency's competences to carry out awareness-raising work, take measures to prevent discrimination on any of the grounds

¹⁵ *Vulnerable/Target groups – Situation of migrants, asylum-seekers, [etc] – Integration.*

covered in the AGG and conduct academic research into such discrimination, any person who believes they have been discriminated against on any of the grounds covered by the AGG may take their case to the Agency, which is entrusted with giving such persons independent assistance. This may include providing information, arranging for advice to be provided by another authority or endeavouring to seek an out-of-court settlement between parties. The Agency is not, however, entitled to investigate complaints itself or to bring proceedings before the courts. It is also required to co-operate with the competent Parliamentary Commissioners of the German Bundestag and Federal Government Commissioners, including the Federal Government Commissioner for Migration, Refugees and Integration, where their competencies overlap. To avoid duplication, in cases which come under the responsibility of these Commissioners, the Agency is required to forward the petitioner's complaint to them. The Agency is also required to involve in its work, in an appropriate manner, non-governmental organisations and institutions active in the field of the protection against discrimination.

41. ECRI welcomes the creation in Germany of a body specifically entrusted with combating discrimination, and hopes that both its existence and activities will help to increase the visibility and effectiveness of the fight against discrimination in Germany. It notes in this context that the Agency has recently published a detailed brochure containing explanations and examples on the AGG.¹⁶ Other material with appeal to the broader public is also being prepared. ECRI is concerned, however, that so far, in the eyes of civil society actors working in the field of combating racial discrimination, the Agency is perceived as somewhat distant from victims and lacking an understanding of their perspective. From ECRI's perspective, one of the primary purposes of setting up a national body with special competencies in the fight against racism and racial discrimination is to bring avenues of redress closer to victims. ECRI therefore hopes that this perception will change rapidly, and that both the presentation of the Agency's first annual report to Parliament in 2009 and the publication in languages other than German of information about the new legal framework in place to fight discrimination will provide an opportunity not only to raise the Agency's public profile but also to make it more accessible to victims. It also hopes that the Agency will be able to strengthen its contacts with non-governmental associations working with victims of discrimination.
42. As regards the guarantees of effective functioning of the Agency, ECRI observes that with a staff of 23 people and an annual budget of 2.8 million EUR in 2008 and 3 million EUR in 2009, the Agency would appear to have relatively few resources to carry out its statutory tasks; this will be even more the case as public awareness of the AGG and of the Agency itself increases.
43. ECRI recommends that the German authorities examine, in line with ECRI's General Policy Recommendation No. 7, the possibility of extending the competencies of the Federal Anti-Discrimination Agency to include the power to investigate individual complaints, as well as the right to initiate, and participate in, court proceedings.
44. ECRI recommends that the German authorities ensure that sufficient necessary financial and human resources are available to the Agency to enable it to carry out its current tasks, and that these resources are expanded as necessary to ensure that the Agency can keep pace with any increases in workload as its work becomes better known.

¹⁶ *AGG-Wegweiser: Erläuterungen und Beispiele zum Allgemeinen Gleichbehandlungsgesetz*, published November 2008.

II. Discrimination in Various Fields

Education

45. In its third report, ECRI encouraged the German authorities in their efforts to improve the position of non-citizen children¹⁷ in schools. It considered education in German as a second language from kindergarten level upwards as one of the priority areas for action. It stressed, however, that measures aimed exclusively at non-citizen children would not suffice to ensure equality of opportunities of these children in education. In this respect, it recommended initiatives to strengthen the intercultural competence of the school communities through measures targeted at the majority population as well.
46. Both international studies and research carried out within Germany in recent years show that first- and second-generation immigrant children continue to have significantly lower chances of success in the German school system than German children – although their desire to succeed is as high as, or even higher than, that of German children.¹⁸ In Germany's multi-track secondary school system, despite the mechanisms in place to ensure permeability between the different streams, the proportion of non-citizens in the lowest stream (*Hauptschule*) is well over twice as high as that of German children, and the proportion of non-citizens who do not even complete *Hauptschule* is considerably over twice the proportion of German citizens. At the same time, the proportion of non-citizens in the highest stream (*Gymnasium*), giving access to university education, is well under half that of German children. One study found that in Baden-Württemberg, non-citizen children were three-and-a-half times more likely to end up in a special school for children with learning disabilities than German children. Overall, only 62.6% of men and 51.3% of women with an immigrant background have completed education or training of some form, compared with 88% of men and 73.4% of women who do not have an immigrant background. ECRI emphasises that this contrast in the education received by, and the education outcomes of, non-citizen and German children with a migration background as compared with other German children is deeply worrying. It notes that studies on this situation have stressed two key factors that may help to redress the situation: first, providing support for developing linguistic skills in the language of instruction (German), and second, addressing the tendency to direct children with a migration background to schools with lower performance expectations, which are dominated by socio-economically disadvantaged student populations.
47. The German authorities have indicated that German as a second language and special remedial language courses for children whose mother-tongue is not German have become an important element in the German day-care, education and training system. Education is a competence of the *Länder*, and the latter have all developed binding education and training plans for pre-school facilities and schools, which fall within their sphere of competence. These plans are either already in place or are being implemented progressively. The key elements of these education and training plans are the promotion of language and intercultural skills. Indeed, in most *Länder*, the language skills of all children are assessed at pre-school level, and extra classes provided if required. These

¹⁷ ECRI's third report was published in 2004. ECRI notes that since 2006/7, the term "children with a migration background" has been used, covering both citizen children with a migration background and non-citizen children.

¹⁸ See in particular OECD 2006, *Where Immigrant Students Succeed: A Comparative Review of Performance and Engagement in PISA 2003*; see also Federal Ministry of the Interior, *Migration and Integration: Residence law and policy on migration and integration in Germany*, April 2008, from which the following figures are drawn. In the present paragraph, the terms "non-citizen" and "immigrant background" correspond to the terms used in the relevant studies.

measures are not restricted to foreign children, but focus on all children with language deficits or children whose mother-tongue is not German. In parallel, specialists in the field of education working in day-care and educational facilities are required to undergo relevant training.

48. ECRI welcomes these measures, which are no doubt a step towards providing children experiencing initial language difficulties with greater chances of achieving better outcomes in school. It welcomes in particular efforts made to promote and foster the linguistic abilities of children from the very earliest stages, as a key means of improving their school outcomes overall. While it seems that kindergarten attendance rates are in any case high, ECRI stresses that those children having missed out on kindergarten are likely to be those who subsequently perform less well in school, in particular due to language difficulties. Given the stark disadvantages faced by children with a migration background in the education system, ECRI particularly emphasises the key role in improving the education outcomes of disadvantaged children that could be played by ensuring that all children have access to free kindergarten education, at very least for the final year before school.
49. As regards teacher training, it is reported that relatively few teachers are trained in teaching German as a second language. ECRI also notes that in a system where children with a migration background are considerably less likely to succeed in school than others, the number of teachers who are themselves first- or second-generation immigrants is unlikely to increase rapidly. Efforts to increase the cultural awareness of teachers are thus all the more urgent. Not only do teachers' attitudes influence children's perceptions of their own capacities; in Germany, teachers also play a central role in directing students towards the different streams of secondary education. NGOs report that some teachers display openly discriminatory attitudes in the classroom, in particular towards Turkish and Muslim children, and some may have a tendency (for example, through the misguided belief that it will simply be easier for these students to cope in the lower levels of the system) to direct such students more often towards the lower streams of secondary education, even, in some cases, where the students have the skills to complete *Gymnasium*. In addition, parents of first- and second-generation immigrant children may be less well equipped than German parents to question such recommendations, as they may themselves experience language difficulties or be less familiar with the German school system. ECRI notes that the system of streaming in schools is currently the subject of some debate in Germany but stresses that for as long as it continues to exist, every effort must be made to ensure that it does not produce, promote or compound problems of discrimination in Germany.
50. At an Education Summit held in Dresden on 22 October 2008, involving both the German authorities and the *Länder*, some significant targets were set. These included a pledge to provide more language assistance to immigrant children, and a proposal to increase spending on education and research to 10% of GDP by 2015. However, it was reported that the summit did not provide an opportunity to examine the entire education chain from kindergarten all the way through to university and life-long education. Concrete decisions on funding and on measures to translate the important agreements of principle into practice were moreover deferred pending their preparation by a strategy group that is not due to report until after the next federal elections, in autumn 2009.
51. Against the above background, ECRI draws the attention of the German authorities to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education. It stresses in particular the elements of this Recommendation that concern the development of policies at national and regional level to ensure the full participation, on an equal footing, of

children from minority groups in education; combating racism and racial discrimination within schools, in particular through ensuring that the fight against such phenomena in schools, whether they emanate from pupils or educational staff, is part of a permanent policy; and training all teaching staff to work in multicultural environment.

52. ECRI strongly encourages the German authorities to continue and intensify their efforts to ensure that no children suffer disadvantage in the school system due to inequalities in their linguistic skills in German, and recommends that they draw inspiration in this regard from ECRI's General Policy Recommendation No. 10. In this context, ECRI also recommends that the German authorities ensure that all children in Germany have access to free kindergarten education, at very least in the final year before primary school.
53. ECRI strongly recommends that the German authorities step up the provision of training programmes to teachers and other school staff, in accordance with ECRI's General Policy Recommendation No. 10, in order to increase their understanding of a variety of cultures and equip them to work effectively in increasingly diverse classrooms, including increasing their capacity to teach German as a second language to children with a different mother tongue.
54. Bearing in mind that no immediate move away from the present streaming system for secondary schooling in Germany has been envisaged, ECRI recommends that the German authorities take urgent steps to implement targeted training programmes to ensure that all teachers have the capacity to assess objectively the skills of students due to enter the secondary school system, in order to ensure that students are not sent to schools in the lower academic streams unless this is strictly necessary.

Employment

55. In its third report, ECRI encouraged the German authorities to prevent and combat racial discrimination, racism and xenophobia in the labour market. It reiterated its recommendation that the German authorities ensure that the barriers encountered by non-citizens and persons of immigrant background for entry into the labour market were accurately identified, in order to target funding to initiatives in priority areas. It further recommended that the German authorities evaluate the implementation of the new competences of the Works Councils in the field of combating racial discrimination and promoting the integration of foreign workers, and that the "XENOS – Living and Working in Diversity" programme be evaluated, in order to assess its effectiveness in combating racial discrimination, racism and xenophobia in the labour market.
56. Persons with a migration background in Germany continue to suffer from serious discrimination in access to employment, particularly in the case of qualified workers. Even with equivalent qualifications, immigrants and their children have greater difficulty finding work than the rest of the population. An OECD report published in 2007 found that, for immigrants with tertiary qualifications, the employment rate was 68%, compared with 84% for persons born in Germany. At the other end of the scale, for jobs requiring few or no qualifications, a slightly higher proportion of immigrants (45%) was employed than of persons born in Germany (40%). Young immigrants are more likely than Germans to seek apprenticeships, yet even so, their percentage of the overall number of apprentices remains lower than their percentage of the population in Germany. Even taking account of the lower educational attainment of children with a

migration background,¹⁹ the employment rate of immigrants remains significantly lower than that of native-born Germans.

57. NGOs report that in the labour market, visible differences – including a person’s name – are a significant factor in discrimination in access to employment, especially where such differences are linked to a perceived Muslim or Turkish background. It is still common to include photographs on CVs in Germany and women graduates, even with high marks from highly respected German academic institutions, report that they are not invited to interviews if their photograph shows them wearing a headscarf.²⁰ Black persons applying for work report being turned away as soon as employers see them. Advertisements requiring “mother-tongue German” have also been reported. Precarious residency status can also act as an added barrier for non-citizens seeking access to work or apprenticeships. ECRI observes that the new anti-discrimination legislation should help to provide a remedy for some individuals who have been subject to discrimination and who are in a position to make a complaint within the required time-limits.²¹ However, structural approaches to combating discrimination are also required, and increased efforts to change employers’ attitudes and promote a diversity approach in the workplace appear to be urgently needed. ECRI notes with interest that a Charter of Diversity was initiated by the business community in 2006, to which several hundred businesses have subscribed.
58. Since ECRI’s third report, the implementation and effects of the 2000-2006 “XENOS – Living and Working in Diversity” programme, which included around 250 multi-year and nationwide projects against xenophobia and right-wing extremism and for tolerance and diversity on the labour market have been evaluated. The results of and recommendations made in this evaluation were incorporated into the follow-up programme drawn up by the Federal Ministry for Labour and Social Affairs called “XENOS - Integration and Diversity” (2007-2013 funding period). The goal of the new programme is to boost awareness of democracy and tolerance and to eliminate xenophobia and racism. The main focus is on preventive measures against exclusion and discrimination on the labour market and in society. Activities against xenophobia, racism, right-wing extremism, antisemitism and discrimination on the labour market are to be promoted in areas such as: work, administration, training, schools and vocational training in Germany and in the European context. Six priority areas have been identified: qualification and further training at school, in training and at work; cross-border and transnational measures; in-company measures and educational work in companies and public administrations; measures to integrate immigrants; teaching facts about and awareness-raising against right-wing extremism; and promoting moral courage and strengthening civil-society structures in local communities and rural regions.
59. ECRI encourages the German authorities to pursue their efforts to create a workplace free of racism, racial discrimination, xenophobia and other related forms of intolerance, including through measures such as the programme “XENOS – Integration and Diversity”.
60. ECRI strongly recommends that, as part of their ongoing efforts towards creating a workplace free of racism, the German authorities launch an awareness-raising campaign aimed specifically at changing employers’ attitudes towards persons with an immigrant background. This campaign should focus not only on

¹⁹ See above, *Discrimination in Various Fields – Education*.

²⁰ See further below, *Vulnerable/Target groups – Muslim community*.

²¹ See above, *Existence and Implementation of Legal Provisions – Civil law provisions: General Equal Treatment Act*.

employers' obligations and liabilities under the new General Equal Treatment Act (AGG) but also on the positive aspects of diversity in the workplace. It could form part of a regular series of such campaigns.

Housing

61. In its third report, ECRI recommended that research be carried out into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing, in order to inform targeted policy responses to any problems found.
62. Various studies carried out in the past have shown that on average, migrants living in Germany pay higher rent than German citizens but live in smaller houses or apartments. In some cities migrants also live mostly in specific districts, a fact that is readily used by conservative commentators to criticise migrants, and especially Muslims, for creating and living in "parallel societies". In public debates on how to reduce the concentration of migrants in some neighbourhoods, the focus has at times tended to be on finding ways to make migrants relocate to new neighbourhoods or to prevent them from moving in to districts which already have a high proportion of migrants, rather than on, say, incentives that could be offered to German citizens to move into such neighbourhoods, or measures (such as improving schools or living conditions) to make such districts more attractive. NGOs report that a key role is played, however, by discriminatory practices of landlords and property managers, based for example on a person's name or on their fluency in German. Cases in which rooms are advertised as available for mother-tongue German speakers only are also reported.
63. The authorities have pointed out that housing is one of the fields covered by the General Equal Treatment Act (AGG) 2006. However, as noted above (§ 27), the inclusion in the Act of a provision expressly permitting differential treatment on the basis of racial or ethnic origin gives rise to doubts as to whether the AGG will be of assistance in turning this situation around.
64. ECRI strongly recommends that the German authorities carry out research into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing, in order to inform targeted policy responses to any problems found. It recalls in this context its recommendation made earlier in this report that the authorities keep under review the impact of the new legislation in preventing discrimination and in ensuring that it is effectively sanctioned when it does occur, in particular as regards the provisions concerning housing

III. Racism in Public Discourse

Political discourse

65. In its third report, ECRI encouraged the German authorities in their efforts to ban political parties and other organisations which resort to racist, xenophobic and antisemitic actions and propaganda. It recommended that the authorities consider enacting legislation to withdraw public financing from organisations that promote racism, xenophobia and antisemitism.
66. Since ECRI's third report, some worrying developments have occurred in the political arena in Germany. The success in Mecklenburg-Western Pomerania in 2006 of the National Democratic Party (NPD) – which has flags and symbols similar to Nazi paraphernalia and which was labelled as "racist, antisemitic and revisionist" in the 2006 *Verfassungsschutzbericht* – is a particular case in point. The leader and two senior members of the NPD were indicted in early 2008 on charges of racial incitement. Support for the party, which receives state funding, quadrupled in local elections in Saxony in June 2008, and it is now represented

in all 10 regional councils of Saxony. Supporters of this party have distributed xenophobic and antisemitic tracts in schools in several *Länder* and chanted antisemitic slogans during protest marches. Attempts to ban the party in 2003 failed, as some evidence against it had been improperly gathered by undercover informants; however, suggestions that efforts should be made to have the party banned resurfaced in 2008. Meantime, the far-right German People's Union (DVU) won a number of seats in the Brandenburg legislature. As mentioned elsewhere in this report, a single-issue anti-mosque movement created in Cologne won 5% of votes (as well as 5 seats) in recent local elections there.

67. While most mainstream parties have for the most part avoided racist comments or overtones, some discourse aimed at Muslims has tended to focus essentially on security issues, or on a supposed integration deficit of Muslims in German society. This approach is also of concern to ECRI.²²
68. ECRI again encourages the German authorities in their efforts to ban political parties and other organisations which resort to racist, xenophobic and antisemitic actions and propaganda. It recommends that the authorities consider, in line with ECRI's General Policy Recommendation No. 7,²³ enacting legislation to withdraw public financing from organisations that promote racism, xenophobia and antisemitism.
69. ECRI recommends that the authorities encourage politicians to take the utmost care to avoid perpetuating hostility or negative stereotypes about non-citizens and members of minority groups; instead, they should take the lead in denouncing racism and discrimination and in ensuring that non-citizens and members of minority groups are perceived as equal and valuable members of society.

Neo-Nazi propaganda

70. In its third report, ECRI recommended that special efforts be deployed to counter the right-wing extremist hate music scene. ECRI notes that music from the extreme right-wing scene continues to act as a vector for spreading racist, antisemitic and xenophobic ideas, and is also often used as a tool for recruiting youths as new members of right-wing extremist groups. These groups reportedly seek to recruit young people directly in schoolyards, for example by giving away free CDs to students, and use music and magazines to create links between extremist groups and young people. The authorities estimate that there are presently around 4 400 Neo-Nazis and 10 000 sub-culture-oriented and other right-wing extremists having a tendency to violence in Germany, numbers which have not decreased in recent years.
71. The authorities have been active in investigating and prosecuting members of neo-Nazi groups.²⁴ In October 2008, the German authorities carried out nationwide raids on the offices and homes of individuals affiliated with a youth group having links to the NPD, and suspected of indoctrinating teenagers and children with neo-Nazi ideas during summer camps. In April 2007, the Interior Ministry of Saxony prohibited a neo-Nazi group that had committed several acts of racist violence. In March 2007, three men were sentenced for burning the diary of Anne Frank. In March 2006, major raids were carried out on the homes of over 100 persons suspected of having links to the banned Blood and Honour skinhead

²² See below, *Vulnerable/Target Groups – Muslims, – Situation of migrants, asylum-seekers, [etc] – Integration*.

²³ See § 16 of the General Policy Recommendation and § 36 of the accompanying explanatory memorandum.

²⁴ Acts of violence by neo-Nazis are dealt with below, under *Racist violence*.

group. ECRI welcomes these efforts as an essential part of the fight against racism, xenophobia and antisemitism.

72. ECRI strongly encourages the German authorities to pursue their efforts to ban neo-Nazi organisations and groups, and refers to its further recommendations made below concerning the fight against racist violence, including the need to take a comprehensive approach in order to identify and combat the causes of such violence.

Internet

73. In its third report, ECRI recommended that the German authorities intensify their efforts to counter racist, xenophobic and antisemitic activities on the Internet, and encouraged the authorities to promote initiatives which had proved successful in countering racist, xenophobic and antisemitic activities on the Internet. ECRI notes that since its third report, the prevalence of racist expression on the internet does not appear to have decreased. A high proportion of racist expression via the internet appears to be authored by persons belonging to neo-Nazi groups; their targets are most often Roma/Sinti or members of the Jewish community. The authorities report that it is not always easy to bring prosecutions in such cases or to close down offending sites, as they frequently hosted on overseas servers. However, successes have been achieved through international co-operation, including at the initiative of NGOs.

74. ECRI reiterates its recommendation that the German authorities intensify their efforts to counter racist, xenophobic and antisemitic activities on the Internet, and again draws the authorities' attention to its General Policy Recommendation No. 6. ECRI again encourages the German authorities to promote the use of initiatives which have proved successful in countering racist, xenophobic and antisemitic activities on the Internet.

Media

75. In its third report, ECRI referred to the need to ensure that reporting did not perpetuate racist prejudice and stereotypes, and to the adoption and implementation of codes of self-regulation as useful tools to these ends. It also noted the need for the media to equip itself better to reflect a diverse society, both through training journalists from the majority population and through a stronger representation of persons with an immigrant background in the media professions.

76. ECRI notes that certain measures related to the media, such as efforts to promote innovative and integrational television programmes, are included in the National Integration Plan.²⁵ The Federal Agency for Civic Education also runs activities aimed at strengthening the role of local journalists in contributing to the cohesion of communities in their district, city or region. ECRI is therefore concerned to learn that the only multicultural radio programme currently being broadcast, radiomultikulti in Berlin, is to be shut down in 2009 by local radio station RBB. Generally speaking, minorities continue to report that they are underrepresented in the media, and where they are represented, it is usually with stereotypes. This phenomenon affects not only the Black community and Sinti and Roma, as noted elsewhere in this report,²⁶ but also Muslims. The latter point out that they have tended to be associated, as a group, with the offences of a few. They also point to intense media coverage of an incident where the

²⁵ See below, *Vulnerable/Target groups – Situation of migrants, asylum-seekers, [etc] – Integration and naturalisation.*

²⁶ See below, *Vulnerable/Target Groups – Black Community, – Sinti and Roma.*

headmaster of a school attended mostly by students with an immigrant background, in Berlin's Neukölln district, asked for help as he considered the situation there had gone beyond his control; at the same time, similar incidents in schools mostly attended by German pupils passed unreported. ECRI emphasises the importance of equipping media professionals with special training on reporting in a diverse society. It also stresses that a stronger representation of persons of immigrant background in the media profession could positively affect the image of persons of immigrant background reflected by the press.

77. ECRI encourages the German authorities to raise awareness amongst the media, without encroaching on their editorial independence, the need to ensure that reporting does not perpetuate racist prejudice and stereotypes and also the need to play a proactive role in countering such prejudice and stereotypes. ECRI recommends that the German authorities engage in a debate with the media and members of other relevant civil society groups on how these ends could best be achieved.

78. ECRI encourages the authorities and all relevant actors to implement all measures of the National Integration Plan aimed at ensuring the media are better equipped to deal with the diversity of present-day German society.

IV. Racist Violence

79. As mentioned in previous reports, ECRI considers racist, xenophobic and antisemitic violence to be one of the most dangerous expressions of racism, and a priority area for action in Germany. Asylum-seekers, members of Jewish communities, Roma and Sinti continue to be targeted by such attacks. Visible minorities, especially in the eastern parts of the country, where the highest numbers of crimes occur in per capita terms, are reported to be particularly exposed to racist violence.²⁷ Unfortunately, the number of violent crimes with extremist, xenophobic or antisemitic motivations has continued to rise in recent years.

80. Many of these attacks are committed against single victims by several young men or teenagers acting together and belonging to or sympathising with more or less organised Neo-Nazi, skinhead or other right-wing extremist groups. In its third report, ECRI noted that the problem of racist, xenophobic and antisemitic violence was not only linked to conditions specific to the youth who are perpetrators of these crimes, however, but was also favoured by other, more general conditions prevailing in German society as a whole. It encouraged the authorities in their efforts to take a more comprehensive approach to the phenomenon of racist, xenophobic and antisemitic violence, not focusing exclusively on the activities of right-wing extremists but seeking to address other causes underlying this violence which may be found in society as a whole, such as perceptions about non-citizens and their place within German society; the incidence of racial discrimination in everyday life; and the latent racism, xenophobia and antisemitism existing more generally in other segments of the population of Germany. In this context, ECRI notes with interest that long-term academic research is being carried out into the phenomenon of group-focused enmity in Germany, its causes and the conditions in which it is likely to find expression. It welcomes the interest displayed by the authorities in the results of this work, which may help in designing increasingly effective strategies to prevent and combat racist violence in Germany.

81. A number of initiatives supported by the authorities may also be noted. One such initiative is the Alliance for Democracy and Tolerance, which has been in place

²⁷ See also below, *Vulnerable/Target Groups – Black Community*.

since 2000 and of which the mission is to promote positive messages around democracy and tolerance through preventive and practical measures. The measures aim to increase acceptance of immigrants in German society, promote the efforts of immigrants to integrate and increase their participation, and find concrete solutions when integration problems arise. Following on from an earlier programme, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth also initiated two German-wide programmes against right-wing extremism, xenophobia and anti-Semitism in 2007. The first, "Diversity feels good. Youth for diversity, tolerance and democracy", aims to raise awareness amongst children and young people with a view to getting them involved in the fight against right-wing extremism, xenophobia and antisemitism. The programme currently supports 90 model projects and 90 local action plans throughout Germany. The second, "Competent for democracy – Counselling network against right-wing extremism" provides professional counselling on issues related to racism, xenophobia or anti-Semitism, in particular to help respond to crisis situations, and aims to enhance the co-operation between the federal government and the *Länder*. Almost all the *Länder* have now set up counselling networks in the framework of this programme. The police are also taking an increasingly active role in working to prevent racist, xenophobic and antisemitic crime. This work primarily targets young people, for example through the distribution to schools of the "Wolves in Sheep's Clothing" media kit, including a film targeted at 13-year-olds and supplementary material for teachers on how to use the material in classes; as well as a follow-up DVD including award-winning television spots against right-wing extremism made by schoolchildren. It has also led to the publication of a leaflet designed to help parents identify signs (for example, brands of clothing or other insignia) that their children may be becoming involved in the activities of extreme right-wing, and particularly neo-Nazi groups. As part of its broad mandate to promote civic education, the Federal Agency for Civic Education set up a specific extremism unit in 2007. The Forum against Racism set up by the Federal Ministry of the Interior in 1998 also continues to serve its members (30 governmental organisations and 60 non-governmental organisations) as a platform for dialogue on the fight against racism and xenophobia. Other initiatives at grassroots levels include support programmes for victims, as well as programmes to assist offenders to leave right-wing groups. Non-governmental organisations report, however, that even though it is clear that sustained efforts are needed to combat the prevalence of racist, xenophobic and antisemitic violence in Germany, local programmes continue to be funded on only a very short-term basis, which hampers their capacity to be effective.

82. ECRI welcomes the above initiatives and notes that considerable resources have been invested in combating the gravest forms of racism and xenophobia through a variety of means. It also welcomes the fact that action is being taken at several different levels, including supporting victims, fighting crime when it occurs, assisting perpetrators to break out of extremist groups and seeking to prevent young people from going down the path of extremist activity. Bearing in mind the high levels of racist violence that currently prevail in some parts of German society, ECRI emphasises that programmes such as these are likely to be needed for a considerable time to come.
83. As regards the situation of victims of racist violence, ECRI is not aware of any new research carried out in recent years. In terms of compensation, as noted in ECRI's third report, the authorities may now pay compensation on a voluntary basis to victims of racist violence under the Victims Compensation Act of 2001. While these provisions are overall welcome, ECRI understands that the criteria on the basis of which the level of compensation is determined do not depend on the type and severity of the offence suffered by the victim so much as on their country of origin and the length and basis of their residence in Germany. ECRI stresses that, no matter what the citizenship or residency status of the victim,

racist violence constitutes the worst form of expression of racism; it considers that compensation awarded to victims should reflect this.

84. ECRI strongly encourages the German authorities to pursue and consolidate their efforts to take a more comprehensive approach to the phenomenon of racist, xenophobic and antisemitic violence, not focusing exclusively on the activities of right-wing extremists but also addressing other causes underlying this violence which may be found in society as a whole.
85. ECRI reiterates its recommendation that the German authorities continue and intensify their support to local initiatives aimed at strengthening democratic civil society and at equipping local communities against right-wing extremism and, more generally, against racism, xenophobia and anti-Semitism. It also recommends that they improve access to funding, in particular long-term funding, for grass-roots organisations working in this field.
86. ECRI recommends that the German authorities continue and intensify their efforts in order to address the position of victims of racist, xenophobic and antisemitic violence, taking account of the fact that compensation in this respect should reflect the harm suffered by the victim. It recommends that these efforts also include concrete initiatives to rehabilitate victims as well as academic research in this field.
87. In its third report, ECRI encouraged the German authorities in their efforts to search for means to improve the implementation of existing criminal legislation to combat right-wing extremism and, more generally, to combat racist, xenophobic and antisemitic violence. It also highlighted the continuing need for training of law enforcement officials on such legislation, and strongly encouraged the German authorities in their efforts to monitor racist, xenophobic and antisemitic crimes and, within these, violent crimes.
88. Although the concept of “hate crimes” is not expressly recognised as such in the German Criminal Code,²⁸ since 2001 the police have gathered statistics on “politically motivated offences” (divided into four categories: “left-wing”, “right-wing”, politically motivated activities by foreigners and other types of politically motivated crimes). These statistics cover, inter alia, offences directed against individuals due to their political beliefs, nationality, ethnic origin, race, colour, religion, ideology, origin, sexual orientation, disability, appearance or social status. Offences are considered to be “extremist” if they are aimed at overthrowing the state. Xenophobic crimes (committed due to the victim’s real or perceived nationality, ethnicity, race, skin-colour, religion or origin) and antisemitic crimes (committed because of an anti-Jewish sentiment) are registered as sub-groups of these offences. The vast majority of antisemitic and xenophobic crimes recorded as politically motivated offences are registered in the right-wing category. Overall, 24.4% of right-wing politically motivated crimes recorded in 2007 were considered to be hate crimes.
89. In 2007, the Federal Criminal Police Office registered 17 176 politically motivated offences, of which 980 were acts of violence. In 2006, 17 597 such offences were recorded, 1 047 of which were acts of violence. 16% of registered right-wing extremist offences registered in 2007 were recorded as having a xenophobic background. NGOs working with victims of such crimes note, however, that the parallel statistics they keep of racist incidents reported to them are consistently higher than the official statistics for the relevant politically motivated offences.

²⁸ See above, *Criminal law provisions against racism*.

One reason cited for this is a lack of confidence amongst victims of racist offences that police officers will deal appropriately with them.²⁹

90. Representatives of victims of racist violence also emphasise that one of the key barriers to successful prosecutions of offenders in this field is the narrow understanding of racism that currently prevails in Germany. As mentioned above (§ 84), there is no definition of racism in German law but it is understood (including in official documents³⁰) as a view held essentially by right-wing extremists, and based on considerations as to the supposed biological superiority of certain “races” over others. NGOs point out that this understanding is widespread throughout German society, including in the criminal justice system, i.e. amongst police, prosecutors and judges. Thus, unless the perpetrators of crimes are clearly identifiable as members of right-wing extremist groups or sympathisers of such groups, crimes based on racist motivations may not be investigated or prosecuted as such. Even if they are, judges’ understanding of racism, combined with the absence of a specific reference in the Criminal Code to racist motivations as an aggravating circumstance for ordinary offences,³¹ may again make it difficult to get an appropriate conviction.
91. ECRI is concerned that because of this, persons having committed racist offences may be escaping due prosecution and punishment for their acts. It draws the authorities’ attention to the definition of racism contained in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which states that, for the purposes of the Recommendation, “‘racism’ shall mean the belief that a ground such as race³², colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons,” and stresses that the mere fact that the perpetrator of a violent crime has no manifest links with the extreme right-wing scene does not mean that they had no racist motivations for their act. ECRI stresses, as has been repeatedly highlighted by the European Court of Human Rights, that racist violence is particularly destructive of fundamental rights, and that it is essential that it be identified and punished accordingly.
92. ECRI recommends that the German authorities seek means to improve the implementation of existing criminal legislation to combat right-wing extremism and, more generally, to combat racist, xenophobic and antisemitic violence. It recommends that the authorities intensify their efforts to train law enforcement officials, including police, prosecutors and judges, on such legislation, in order to ensure that no incidents of racist, xenophobic or antisemitic violence pass unnoticed due to an unnecessarily narrow interpretation of the existing law. It recommends that lawyers also be given the opportunity to receive training on these matters.

V. Vulnerable/Target Groups

Jewish communities

93. See below, Antisemitism.

²⁹ See below, *Conduct of law enforcement officers*.

³⁰ See, for example, the explanation of racism given in the glossary of the Ministry of the Interior: http://www.bmi.bund.de/cln_145/DE/Service/Glossar/Functions/glossar.html?nn=105094&lv2=296448&lv3=152418

³¹ See above, *Criminal law provisions against racism*.

³² Since all human beings belong to the same species, ECRI rejects theories based on the existence of different “races”. However, in this definition ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to “another race” are not excluded from protection.

Muslims

94. In its third report, ECRI recommended that the German authorities take steps to combat and prevent racism and discrimination vis-à-vis Muslims in Germany effectively. It drew the authorities' attention in particular to its General Policy Recommendation No. 5, which proposes a range of legislative and policy measures governments can take to this end.
95. The German authorities estimate that approximately 3.4 million Muslims live in Germany. The great majority are not German citizens. As with other groups, Muslims who do not have German citizenship are referred to and perceived as foreigners, regardless of how long they or their family have lived in Germany, and, unless they are nationals of another EU member state, they do not have the right to vote in elections at any level. Given the increasing diversity of the backgrounds and beliefs of Muslims living in Germany, they reportedly do not have a strong collective identity. Few Muslims hold high-profile positions in German political parties and very few have been elected to the Federal Parliament (*Bundestag*).
96. Muslims frequently experience discrimination in daily life, facing difficulties in access to employment as well as so-called "ghettoisation" in the housing sector.³³ In the field of education, Muslim children are not only strongly affected by the phenomenon of lower school outcomes that affects children with a migration background in general, but also report cases of discrimination against them by some teachers.³⁴ Nearly two-thirds of Muslims reported experiencing some form of discrimination in the past twelve months. As regards attitudes of society in general towards Muslims, when questioned about their experiences in the past year, many Muslims reported having been treated as simple or odd, treated rudely because they were perceived as foreigners, subjected to pejorative comments such as being told to "go home", intentionally insulted or subjected to name-calling; one-fifth reported have been discriminated against by the police or other authorities, nearly one in ten reported having had property deliberately damaged or destroyed and 3% reported having been physically assaulted.³⁵
97. ECRI notes with concern a new law on registration of personal data, which will come into force in January 2009. Under this law, Muslims, in contrast with persons affiliated to religions that are registered as corporate bodies under public law, are prohibited from registering their faith. ECRI is concerned that this may be a violation of the principle of equal treatment.
98. As regards practising and learning about the Muslim faith, it may be noted that religious education in schools is permitted in Germany, but Muslim religious education in schools is at present a relative rarity. In March 2008, the third official Islam Conference agreed to add Islam to the school curriculum in public schools. However, this initiative has been hampered by a lack of qualified Muslim teachers with sufficient knowledge of German to teach the Muslim faith in schools. With respect to practising the Muslim faith, the construction of mosques has often been surrounded by controversy, and in some cases used by extreme right-wing parties to push their own anti-Islam agendas. In response to plans to build one of Europe's largest mosques in Cologne, a single-issue anti-mosque movement was created and won 5% of votes (as well as 5 seats) in recent local elections. The movement invited nationalist groups from around Europe to join a rally and congress in Cologne in mid-September 2008 to fight what it called the "Islamisation and immigration invasion" of Germany and Europe; however, the

³³ See above, *Discrimination in Various Fields –Employment, Housing*.

³⁴ See above, *Discrimination in Various Fields – Education*.

³⁵ *Muslims in Deutschland*, p105.

demonstration was stopped by several thousand anti-right demonstrators who blocked access to the square where it was planned. Not all such projects have been controversial, however: in a number of instances political leaders and the majority of the population have given their support to the building of a mosque. In Duisburg, Germany's largest mosque – combined, in an unprecedented move in Germany, with a local community meeting centre open to all members of the community – opened in October 2008 with general support.

99. A major point of difficulty for Muslim women is the impact, in particular on their chances of finding employment, of the choice to wear a headscarf. Following a decision by the *Land* of Baden-Württemberg in 2000, prohibiting a female Muslim teacher from wearing a headscarf, in 2003 the Federal Constitutional Court – finding in favour of the teacher in that case – ruled that it was up to the *Länder* to legislate to define which religious symbols could be worn in which circumstances. Since then eight *Länder* – Baden-Württemberg, Bavaria, Berlin, Bremen, Hesse, Lower Saxony, North-Rhine-Westphalia and Saarland – have passed laws that explicitly prohibit the wearing of headscarves in schools. In Hesse, all civil servants are banned from wearing headscarves. The public discussion about headscarves is reported to have had even more detrimental effects than the laws themselves for Muslim women, who were portrayed in public discourse as oppressed and dependent. Muslim women moreover report that it has also become increasingly difficult to find employment in the private sector since these laws were passed, as they have sent the message that it is reasonable to reject an applicant solely because she wears a headscarf.
100. Civil society actors continue to report that since the events of 11 September 2001, media coverage of Muslims in Germany has tended to be one-sided. One study found, for example, that police announcements concerning raids on mosques were invariably published as front-page news, yet the fact that virtually all such raids produced no results was not mentioned. Some commentators blame Muslims themselves for the discrimination they experience, suggesting that it is their fault because they do not want to integrate – for example, because they watch satellite television in the language of their country of origin. Likewise, political discourse has also frequently been negative.³⁶ Muslims have increasingly been identified, both by the press and by the authorities, with crimes, and more specifically with terrorism. Political discourse concerning Muslims frequently revolves around “internal security issues”, and the strong focus of the authorities, in particular the German Intelligence Agency (*Verfassungsschutz*), on identifying radical Islamist groups, may result in even moderate groups being denied access to public funding and excluded from policy-making. While it recognises the legitimacy and importance of ensuring internal security, ECRI is concerned that an approach in which the non-violent individuals who form the vast majority of the Muslim community are simply equated with the few who may be prepared to resort to violence may stigmatise all Muslims in the eyes of the general public, and in the long run, alienate more than it reassures. ECRI emphasises that messages sent by the authorities and by the media are of central importance in building confidence and strengthening dialogue in order to foster a society based on trust rather than mutual suspicion or fear.
101. Against this background, ECRI welcomes the creation by the Ministry of the Interior of the German Islam Conference (*DIK*), intended to create a permanent space for dialogue between the authorities at all levels and Muslims in Germany. Such a space had previously been lacking, in part due to the authorities' insistence on seeking a single partner for dialogue, to represent the full breadth and diversity of the country's more than 3 million Muslims from Europe, Northern

³⁶ See above, *Racism in Public Discourse*.

and sub-Saharan Africa, the Middle East and Asia. The Conference is thus an important symbol of change for the authorities. The authorities have indicated that the goal of the Conference is to promote inclusive and constructive forms of community, and to ensure better integration of Muslims in Germany. It is intended to show by example that Muslims have become a part of German society, to counteract segregation of Muslims in Germany, and to prevent Islamism and extremism. ECRI observes that the exercise at stake is a delicate one: as much as the new dialogue between Muslims and the authorities may send a positive message to society as a whole, this message risks being obscured by the focus on security issues. The risk is that the latter focus may create the false impression that extremism is a generalised phenomenon amongst Muslims, and a problem solely of Muslims. How this issue is managed will therefore have a strong influence on whether the Conference is able to achieve its goals.

102. ECRI strongly recommends that the German authorities intensify their efforts to combat and prevent racism and discrimination vis-à-vis Muslims in Germany effectively. It draws the authorities' attention once again to its General Policy Recommendation No. 5 on fighting intolerance and discrimination against Muslims, which proposes a range of legislative and policy measures governments can take to this end.
103. ECRI recommends that the German authorities take all necessary steps, in the field of registration of personal data, to ensure that persons practising the Muslim faith are treated on an equal footing with persons practising religions that are registered as corporate bodies under public law.
104. ECRI strongly recommends that the German authorities make every effort to differentiate, in their own work and in the messages sent to society as a whole, between the small number of Muslims who may, as in any group, hold radical views, and the vast majority. It draws the authorities' attention to its General Policy Recommendation No. 8, which proposes a range of legislative and policy measures governments can take to fight effectively against terrorism while at the same time effectively combating racism.

Turkish community

105. The Turkish community in Germany comprises around 2.7 million people and is the largest single group of residents of non-German origin. Around 1.7 million of these persons do not have German citizenship, although the great majority have been living in Germany for more than 7 years.³⁷ Frequently considered simply as a subset of the Muslim community, the Turkish community includes immigrants from a variety of backgrounds. Nonetheless, their experience of discrimination is similar to that of many Muslims: as children with a migration background, many children of Turkish origin experience below average education outcomes; members of the Turkish community also experience discrimination in access to employment and housing, for example on the basis of their name or their non-native German.³⁸ As the largest group of non-citizens in Germany, Turks are also particularly affected by the introduction of the new national integration policy, with the positive and negative effects described elsewhere in this report.³⁹ They are moreover not immune from violent racist attacks. The many members of the Turkish community who are not German citizens or citizens of other EU countries are also not entitled to vote or stand in elections at any level.

³⁷ On the acquisition of German citizenship, see above, *Citizenship law*.

³⁸ See above, *Discrimination in Various Fields – Education, Employment, Housing*.

³⁹ See below, *Vulnerable/Target groups – Situation of migrants, asylum-seekers, (etc) – Integration*.

106. Against this background, a survey conducted in March 2008 found that, while most persons of Turkish origin did not regret their decision to come to Germany, more than half felt unwelcome and inadequately represented. The election in November 2008, for the first time, of a German of Turkish origin as one of the leaders of a German political party was understandably hailed as a landmark event in German politics.

107. ECRI draws the authorities' attention to the recommendations made elsewhere in this report, in particular those concerning access to citizenship, discrimination in the fields of education, employment and housing, and integration, and underlines in this context the importance of creating an environment in which members of the Turkish community as well as immigrants from all backgrounds feel welcome.

Black community

108. Members of the Black community continue to be especially vulnerable to racist violence. A number of particularly violent and brutal attacks against Black persons have occurred since ECRI's third report. Black persons report that there are still "no-go areas" in some *Länder* to which they avoid going alone, or avoid going altogether if possible, and to which they would not take their children at all, for fear of being targeted by racist attackers. Black victims of racist violence also report being treated as "second-class" victims when they turn to the police for help, for example being treated as suspected drug-dealers, or at best as time-wasters, when they wish to report a racist attack, or benefiting from active police intervention to put a stop to a violent attack, only to discover later that a failure by the police officers present at the scene to arrest or even to check the identities of the attackers has compromised the chances of successful prosecution.

109. Frequently referred to as visible minorities in relation to racist violence, members of the Black community (which is estimated to include 200 000 to 300 000 persons) complain that they are otherwise virtually invisible as active members of society. Subject to discrimination in access to employment,⁴⁰ Black people find few professional role models, whether working as teachers, bank clerks or public servants. They also suffer from the streaming system in place in the field of education.⁴¹ Moreover, there is a relative lack of diversity in the media⁴² and where Black actors appear, the characters they play often merely respond to prevailing stereotypes. In the field of advertising, NGOs report that some advertisements depict Black persons as commodities rather than human beings. ECRI further notes that there appears to have been little research carried out into the situation of the Black community in Germany that would make the issues they face more visible to the authorities and to the public at large, and by the same token easier to tackle.

110. ECRI draws the German authorities' attention to the recommendations made elsewhere in this report, aimed in particular at overcoming racist violence and racial discrimination in various fields of daily life and at increasing diversity in the media, and stresses their importance to overcoming the forms of racism most frequently experienced by members of the Black community; it furthermore recommends that research be carried out into the specific situation of members of the Black community in Germany, in order to identify any fields where action is most urgently needed to redress the disadvantages they face.

⁴⁰ See above, *Discrimination in Various Fields – Employment*.

⁴¹ See above, *Discrimination in Various Fields – Education*.

⁴² See above, *Racism in Public Discourse – Media*.

Roma/Sinti communities

111. German Sinti and Roma are one of the four national minorities recognised in Germany and as such, receive support from the federal state in order to defend and promote their interests as a minority. The state has also taken welcome steps to recognise officially the suffering experienced by these communities during the Holocaust. In daily life, however, members of the Roma and Sinti communities report that they continue to face discrimination, in particular in access to housing and in the field of education, where teachers frequently have little knowledge of the history of Sinti and Roma, and perpetuate negative stereotypes. Representatives of the Roma and Sinti communities also draw attention to a generally unfavourable climate of opinion towards them, both amongst the media – which continue mentioning accuseds' Roma or Sinti origin unnecessarily in their reports – as well as amongst the police.⁴³ They also express deep concern about increasingly widespread and virulent expressions of anti-Roma sentiment on the internet. Similar stigmatisation is also experienced by Roma having recently arrived in Germany; moreover, their situation with respect to access to social rights is often more precarious, as many are refugees or asylum-seekers, or remain in Germany only with tolerated status.

112. ECRI recommends that further steps be taken to improve the situation of Roma and Sinti in Germany, in consultation with representatives of these communities, in order to combat and prevent racism and racial discrimination against them. It again draws attention to its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies, which proposes a range of legislative and policy measures governments can take to this end.

Situation of migrants, asylum-seekers, refugees, other beneficiaries of international protection and persons with tolerated status

- *Refugees and asylum-seekers*

113. In its third report, ECRI encouraged the German authorities in their efforts to ensure that persecution from non-state agents and gender persecution were recognised in Germany for the purposes of granting refugee status under the Geneva Convention, and recommended that the authorities intensify their efforts to provide specific training on asylum and refugee questions to judges involved in the asylum process. It further recommended that the German authorities ensure that no person was forcibly returned to his or her country of origin contrary to the principle of *non-refoulement* and Article 3 of the ECHR. ECRI also made a number of recommendations concerning the application of the airport procedure and the situation of unaccompanied children.

114. Since the entry into force of the new Immigration Act on 1 January 2005, Convention refugees and refugees recognised under the terms of the Constitution have benefited from the same status in German law. Gender persecution and persecution by non-state actors have been expressly included as criteria for the recognition of a person as a refugee in Germany. ECRI welcomes this development and notes that since then, recognition rates for refugees have increased. While this may be due to a variety of factors, including variations in countries of origin of asylum-seekers, it seems that at least part of the increase may be ascribed to better implementation of the relevant criteria. However, some concerns remain as to whether the criteria are as yet consistently and effectively applied in practice, meaning that some genuine cases may still be missed.

⁴³ See below, *Conduct of law enforcement officers*.

115. With regard to airport procedures, that is expedited procedures applied to asylum applications lodged on arrival by air and prior to the applicants' entry into German territory, asylum-seekers continue to be entitled to legal counselling in these circumstances. However, ECRI notes that, amongst other concerns with respect to this expedited procedure, higher proportions of asylum-seekers subject to airport procedures (rather than in-country procedures) are found to have manifestly unfounded claims, meaning they are denied entry to German territory. Vulnerable groups such as unaccompanied minors may also still be subject to this procedure, although the number of unaccompanied minors subjected to airport procedures was reported to have decreased in 2007.
116. ECRI is also concerned at the low threshold applied by the courts for revoking asylum or refugee status under section 73 of the Asylum Procedures Act. This means that some persons with refugee status may see this status prematurely terminated, leading them to be induced or in some cases forced to return to their country of origin although the conditions there are not yet conducive to return.
117. ECRI recommends that the German authorities pursue and intensify their efforts to provide specific training on asylum and refugee questions to judges and all other officials involved in the asylum process, in particular to ensure that the new criteria for recognition included in the Immigration Act of 2004 are effectively applied in practice.
118. ECRI recommends that the German authorities keep the airport procedure under review and modify it if necessary to ensure that genuine asylum-seekers are not deprived of protection. ECRI reiterates its recommendation that unaccompanied minors be excluded from the application of this provision.
119. ECRI recommends that the German authorities exercise the utmost caution before revoking refugee status, particularly where this may lead to a loss of residence rights for the person.
120. In its third report, ECRI reiterated its recommendation that the German authorities ensure that asylum seekers were not left in a state of destitution, including by allowing them adequate access to work. ECRI also recommended that the German authorities ensure that asylum seekers' freedom of movement was respected, and that full family reunification rights were guaranteed to all recognised refugees.
121. Following a decision of the Federal Administrative Court on 15 January 2008, recognised refugees are now allowed to choose where they reside. Beneficiaries of subsidiary protection who are dependent on social welfare are still assigned to residence areas, however. Asylum-seekers are subject to even more stringent requirements, as they must reside and remain in their district of assigned residence, and are not allowed to travel outside their assigned district without permission. ECRI notes that an application to the European Court of Human Rights under Article 2 of Protocol No. 4 to the European Convention on Human Rights, contesting the application of this rule, was declared inadmissible.⁴⁴ Independently of any question of compatibility with the European Convention on Human Rights, however, ECRI is concerned that these restrictions on freedom of movement of asylum-seekers – which aim to distribute amongst the *Länder* the costs of looking after asylum-seekers – may place the latter in situations of undue hardship. It draws the authorities' attention to the fact that asylum-seekers, who are already vulnerable and who by definition may have been exposed to persecution in their countries of origin, are in some cases required to live in parts of Germany where racist violence is known to be high, even though in many

⁴⁴ *Omwenyeye v. Germany*, application no. 44294/04, 20 November 2007, Fifth Section.

cases they belong to the groups most likely to be targeted by perpetrators of racist violence. They are thus placed in a situation where they are particularly exposed to racism and xenophobia, without the option of moving to areas where they would be less exposed. Moreover, ECRI understands that while permission to travel is regularly granted to allow an individual to seek legal advice from a lawyer or an NGO, it may not necessarily be granted to visit family members, a result that is likely to compound the isolation and anguish asylum-seekers already experience simply by virtue of their status.

122. The authorities have indicated that asylum-seekers are provided with benefits to cover their basic needs. Benefits are usually given in kind, with some sums given in money to cover additional needs, and are overall around 20% lower than social benefits given to other categories of people. Although asylum-seekers receive a work permit one year after their arrival, this entitlement is only subordinate, meaning they can only be offered a job if there is no other suitable applicant with an ordinary work permit. Asylum-seekers are not entitled to an ordinary work permit until their application has been determined, or up to a maximum of three years after their arrival. They are housed in initial reception centres for a maximum of three months, then dispatched to live in collective centres across Germany. In some *Länder*, children have access to school from the outset; in others, access to school is not granted as long as the family is in the initial reception centre.
123. ECRI notes that some of these collective centres, where asylum-seekers may in some cases live for several years, are still located in isolated areas, where counselling on legal and social issues is less readily available. More generally, ECRI is concerned that accommodating asylum-seekers together in collective housing, even beyond the maximum three-month period in which they may be required to stay in initial reception centres, may be detrimental to their long-term chances of integration, as it not only delays their contact with German society and but may also serve to stigmatise them in the eyes of the majority population. ECRI is also worried that asylum-seeking children assigned to *Länder* where they are not obliged to attend school may in practice not have access to education, and strongly hopes that efforts currently under way to address this issue will come to fruition. ECRI has also received reports that asylum-seekers are required to pay fees when they apply for permission to travel outside of their assigned residence areas. Bearing in mind the low social benefits granted to asylum-seekers, especially in cash form, and their preclusion from access to work, ECRI is concerned that this may leave them with little opportunity to travel in practice, including to consult a lawyer or NGO with respect to their case.
124. As regards family reunification of refugees, ECRI notes that refugees are eligible once their status has become final and they have obtained a residence permit, and that they may, and in some cases must, be exempted from the usual requirement to show that they are not dependent on social welfare and can provide sufficient living space for their family. However, those eligible are generally limited, except in cases of exceptional hardship, to the refugee's spouse and minor children. Moreover, the application process may take many months to process, a situation that is especially difficult for minors seeking to join their parents.
125. ECRI recommends that the German authorities review the restrictions imposed on freedom of residence of beneficiaries of subsidiary protection and freedom of residence and movement of asylum-seekers, in order to ensure that these measures do not have a disproportionate human cost on asylum-seekers.
126. ECRI recommends that the German authorities consider the possibility of extending the access to work of asylum-seekers, to ensure that they have

adequate means to live, and reiterates its recommendation that full family reunification rights be guaranteed to all recognised refugees.

- *Persons with tolerated status*

127. Persons with tolerated status (*Duldung*) in Germany are in principle obliged to leave the country; their presence is tolerated because they cannot be deported (for example, because, even though they have not been recognised as refugees, the situation in their country of origin makes it impossible to deport them). These persons usually have only short-term permits to remain in Germany (for example, for three months, although this period may be renewed repeatedly), making it difficult for them to find work. They are not entitled to take up work at all until they have been in Germany for 1 year, and are also not entitled to benefit from integration measures.
128. In its third report, ECRI encouraged the German authorities in their plans to grant temporary residence permits to persons entitled to temporary protection, at the same time recommending that the authorities work towards a humane solution, respectful of human rights, for those persons who had been living in Germany with tolerated status for a long time and had developed close ties with Germany. ECRI welcomes the fact that, since then, provisions have been enacted that have made it possible for persons who have been living in Germany with tolerated status for some years – 6 years if they have children, 8 if they do not – to be granted a trial residence permit, provided they have accommodation and do not have a criminal record; they can then be granted a residence permit if they are able to demonstrate that they have found work before the end of 2009. This deadline is fixed, however, so persons with tolerated status having arrived in Germany more recently will not benefit from the present provisions. The authorities indicate that to date, around 50 000 people have gained legal status under the present provisions and a previous version.
129. ECRI encourages the German authorities to work towards a solution which is humane and respectful of human rights for all persons, including those who will not benefit from the present provisions, who have been living in Germany with tolerated status for a long time and have developed close ties with Germany.

- *Family reunification*

130. In its third report, ECRI recommended that the German authorities ensure that the right to private and family life and the rights of the child were fully respected for all persons residing in Germany, including non-citizens. It called for measures to facilitate reunification of children with their families and to facilitate visits from family members living abroad. It considered that the maximum age of children falling under the scope of family reunification, which was then 16 years, should not be lowered but should instead be raised to 18 years for all children.
131. The German authorities have stated that as Council Directive 2003/86/EC on the right to family reunification has been transposed into German law, the age limit for the immigration of children for the purposes of family reunification will not be reduced to below 16 years. In accordance with applicable legislation, the age limit of 18 years applies where the children are considered to have a “positive integration prognosis”, in the case of children of those entitled to asylum and recognised Convention refugees, or when children transfer their main ordinary residence to the Federal Republic of Germany together with their parents.
132. Since ECRI’s third report, new measures have been introduced concerning family reunification for spouses. As from 2007, persons arriving in Germany to join their spouse have been obliged to demonstrate proficiency in German to at least A1 level on the Common European Framework of Reference before leaving their

country of origin. In order to prove that they possess the required level of proficiency, spouses must supply a certificate of the Goethe Institute stating that they have passed the “Start Deutsch 1” test; in countries where this test is as yet unavailable, embassies or consulates general make the relevant determination during the visa application procedure. Examination dates, fees and application procedures depend on where the examination is taken. The authorities indicate that to acquire the necessary level of German, persons can attend language courses provided by the Goethe Institute or other organisations; free beginner and more advanced German courses are also available in almost 30 languages on the Deutsche Welle website. In addition, certain groups of persons are exempt from the language proficiency requirement, namely: EU citizens; persons with a physical or mental illness or disability that prevents them from demonstrating basic knowledge of the German language; persons holding a university degree or equivalent qualification; persons not wishing to reside permanently in Germany; persons whose spouse holds a residence permit as a highly skilled worker, researcher, company founder, person entitled to asylum or recognised refugee, or holds a permanent right of residence granted by another EU state; and citizens of Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand or the United States of America.

133. The authorities have indicated that this measure serves to promote new immigrants' ability to integrate. The logic is that basic language proficiency makes it easier to find one's feet on arrival in Germany and forms the basis for further, state-funded integration courses in which new immigrants have had a right to take part since 2005.⁴⁵ ECRI observes, however, that language classes are not always readily available outside major cities; they are rarely provided free of charge when they are available; and for those living outside major cities, internet services are not accessible everywhere, for example, in rural areas in some countries from which candidates for family reunification may wish to apply. Yet the language could be learned upon arrival in Germany, and progress may occur considerably faster upon immersion in a German-speaking environment. Moreover, obliging spouses to remain apart until the spouse who has remained in the country of origin has attained A1 level in German does nothing to further the integration of a spouse already living in Germany – indeed, this separation may rather contribute to a negative, even alienating experience of Germany, without the emotional and psychological support that the presence of family members can provide. There is also no exceptional clause allowing hardship cases to be taken into account. Overall, then – and whereas from the point of view of the majority population, the new requirements may at first glance appear reassuring, as they should mean fewer immigrants arrive in Germany with no knowledge of German – in fact, they may do little to promote the integration of migrants and may even serve to hinder it. Moreover, they may also be discriminatory, as they may result in the *de facto* exclusion of candidates from some countries for family reunification.

134. ECRI reiterates its recommendation that the maximum age of children falling under the scope of family reunification be raised to 18 years for all children.

135. ECRI recommends that the German authorities keep under review the new language requirements for family reunification, in order to ensure that they do not have a discriminatory or counter-productive effect in practice and to allow corrective measures to be taken if necessary, including to allow hardship cases to be taken into account.

⁴⁵ On integration courses, see below, *Vulnerable/Target Groups – Situation of migrants, asylum-seekers (etc) – Integration and naturalisation*.

- *Integration and naturalisation*

136. Many immigrants arrived in Germany between 1955 and 1973 as “guestworkers” (*Gastarbeiter*); the intention at the time was that they would stay only for limited periods in Germany and then to return to their home countries, to be replaced by new foreign workers. In line with this thinking, taking measures to assist these workers to integrate into German society was not considered a priority. A second wave of immigration occurred from 1988 to the late 1990s, with the arrival of around 3 million ethnic German repatriates and refugees. The authorities have recently recognised that the earlier understanding that immigrants would only remain for short periods in Germany has proved wrong, and that Germany is a country of immigration; however, today the reality is striking. Nearly two-thirds of non-citizens presently living in Germany have been resident for more than ten years, and more than 20% have been resident for over thirty years. Official figures show that in total, around 9% of the population of Germany, or more than 7 million people, are non-citizens. Moreover, it is estimated that overall, nearly one in five persons living in Germany, whether citizens or non-citizens, have a migration background.
137. In keeping with this understanding of Germany as a country of immigration, the federal authorities have over the past decade begun to develop a strong new focus on integration. Following a first national integration summit in 2006, a National Integration Plan was presented in July 2007. All levels of government – federal, the *Länder* and local authorities – as well as representatives of civil society and migrants were involved in developing the National Integration Plan, which includes 400 voluntary measures that may be taken by the various authorities, encompassing a broad range of fields. They include, for example, measures to improve immigrant children’s education outcomes (such as providing targeted funding either to schools with a high percentage of children having an immigrant background or for the training of teachers at those schools, or providing increased support to language learning in schools or kindergartens), measures to improve the access of young immigrants to the labour market, programmes to promote integration through sports, as well as measures to promote the participation of parents in their children’s education or to improve access to health care, to promote a more diverse approach in the media or to address the specific situation of women and girls. The overall estimated expenditure by the federal authorities in the field of integration is 750 million EUR.
138. ECRI welcomes the recognition by the German authorities that Germany is today a country of immigration, and that immigrants should be encouraged to participate fully in society and helped to master the basic tool for such participation: the German language. The National Integration Plan represents a significant investment by the authorities in assisting the process of integration, and ECRI salutes the authorities’ willingness to devote considerable resources to this process.
139. The cornerstone of the National Integration Plan is the provision of “integration courses” for adult migrants, primarily focused on language learning. These have been in existence since they were introduced by the Immigration Act in 2005 but were revised following an evaluation in 2006. Today, the standard language course is 600 hours. However, other options are offered to take account of individual needs: these range from an intensive course (400 hours) to a course specifically designed for women (900 hours) to a literacy course (1200 hours). Participants in the first three courses who have not achieved the target level of proficiency within the given time – that is, B1 level, or the first level corresponding to an “independent user” of the language in the Common European Framework of Reference for Languages – may follow a further 300 hours of classes. Proficiency is now assessed via standardised tests throughout Germany. In

addition, 45 hours of instruction on Germany's history, culture and legal system are provided in orientation classes. Support measures to increase participation have been introduced since the 2006 evaluation, such as the reimbursement of travel expenses, the provision of childcare facilities and the reimbursement of 50% of the costs of the course if successfully completed. In principle, and based on the logic that participants will be more committed to the process if they have paid for it, integration courses are not free of charge. Participants' fees are set at 1 EUR per hour. However, the courses are provided free of charge to ethnic German repatriates (*Spätaussiedler*) and recipients of welfare benefits; persons not receiving welfare benefits but with a similarly low income may also be exempted from the fees. The courses are primarily targeted at non-citizens, but German citizens may attend them if they so choose.

140. All newcomers to Germany who are considered as having a perspective of permanent residency are entitled to participate in integration courses, and (with some exceptions) they are obliged to do so if their level of German on arrival is less than A1 on the Common European Framework of Reference. Persons arriving in Germany through family reunification – who are now obliged to demonstrate proficiency in German to at least A1 level before leaving their country of origin – are also required to follow integration courses if their proficiency in German is less than B1 level and unless they fall into an exempted group of people (for example, EU citizens).⁴⁶ Other non-citizens for whom these courses are mandatory are certain recipients of welfare benefits, and foreigners “in need of integration”, i.e. legal guardians of children who do not speak German themselves. There is no obligation to succeed (that is, to pass a test demonstrating that the individual has reached the target proficiency level of B1 in German), but there is an attendance obligation for persons for whom the courses are mandatory, which is understood as an obligation to attend regularly enough not to endanger the possibility of successful completion of the course. Sanctions may be imposed on persons considered to have committed a “gross breach of duty”: that is, in cases where the individual concerned fails to attend the integration course in accordance with the applicable provisions. Thus, recipients of social welfare benefits under the Second Volume of the Social Code (SGB II) who participate in the courses on the basis of an integration agreement may see their benefits cut by up to 30 % and, if they repeatedly fail to attend, their benefits may be cut altogether. Newcomers for whom mandatory attendance was a factor in the attribution of a residence permit may not be granted an extension of that permit.
141. ECRI is concerned that the obligation imposed on some persons to attend integration courses may be counterproductive, as it may tend to give the impression that, in the absence of such an obligation, it would be impossible to integrate those persons subject to it in German society. Moreover, the fact that the obligation to demonstrate a basic knowledge of German (A1 level) prior to arriving in Germany is only imposed on immigrants from some countries and not on immigrants from others may create the false impression that the capacity to integrate in German society is a direct function of a person's country of origin.
142. ECRI is concerned at the possibility of imposing sanctions on persons subject to an obligation to attend integration courses if they fail to attend sufficiently regularly. It notes that such sanctions may have a stigmatising effect. At the same time, they may be damaging to individuals' rights, as they may lead to a refusal to extend a residence permit or to a reduction in welfare payments. ECRI notes that at the very least, exceptions should be possible in some circumstances.

⁴⁶ See above, *Vulnerable/Target Groups – Situation of migrants, asylum-seekers (etc) – Family reunification*.

143. As concerns naturalisation, ECRI notes that benefits for successful participants in integration courses are directly linked to naturalisation, as applicants for naturalisation are now required by German law to demonstrate sufficient knowledge of the German language⁴⁷ and successful completion of an integration course serves as proof of having attained the requisite level in this context. Persons who succeed in the integration course are also eligible to apply for naturalisation after seven years of legal residence, rather than the usual eight. Immigrants demonstrating evidence of integration achieved, in particular a higher level of proficiency in German than the required B1 level, may be eligible for naturalisation after six years of legal residence.
144. As mentioned elsewhere in this report, the practical application of naturalisation criteria is controlled by the competent ministers of the interior of the *Länder*. In recent years, and independently of any language requirements, certain *Länder* have introduced controversial tests that some or all applicants were required to pass in order to obtain citizenship. In Baden-Württemberg, a 30-question test covering applicants' personal and political views, for example with respect to sexual orientation, was introduced in 2005, to be applied if anti-constitutional tendencies were suspected. However, the Ministry of the Interior in Stuttgart was reported as holding the view that "in general", it was to be doubted that Muslims who verbally committed to German constitutional principles were "really internally" committed to them. Citizens of the 57 member States of the Organisation of the Islamic Conference (OIC) and anyone else appearing to be Muslim were thus to be subjected to the test. Following considerable criticism of the test and of the discriminatory attitudes it revealed towards Muslims, a new test was distributed from June 2007 onwards, to be applied to all applicants for naturalisation. Another test introduced in Hesse contained 100 questions, many quite complex.
145. Following discussions within the Standing Conference of Ministers of the Interior of the *Länder*, it was decided to introduce a uniform naturalisation test, replacing the various tests then existing at the level of the *Länder*, to be applied throughout Germany as from 1 September 2008. The relevant legal provisions have been enacted at federal level but will be implemented by the *Länder*. Applicants for naturalisation will be required to pass the test in order to obtain citizenship. The stated aim of the test is nonetheless to open the door to citizenship, rather than to make it harder to obtain. The questions for this test have been made available on the internet in order to allow applicants to prepare for the test. There is no limit on the number of times applicants may sit the test.
146. ECRI welcomes the fact that earlier, *Land*-specific tests have been abolished, in particular the test introduced in Baden-Württemberg in 2005. It considers that the application of a single, national, transparent test is a clear improvement on the previous situation. ECRI notes the authorities' intention that the new tests should "open the door" to citizenship, rather than make it harder to obtain. At the same time, it notes that the introduction of nationwide naturalisation tests is an additional process applicable to those who wish to obtain German citizenship, in addition to existing residency, language and income requirements. While the process of learning for the test may indirectly serve to help integration, by teaching migrants some additional facts about Germany, the underlying message sent to German society is seen by some NGOs as one of exclusion rather than inclusion. ECRI notes that it was reported in late November 2008 that since the tests were introduced, 98% of candidates have passed it.
147. ECRI stresses that integration is a two-way process that implies mutual recognition between the majority population and minority groups. Integration

⁴⁷ See above, *Existence and Implementation of Legal Provisions – Citizenship law*.

should allow minority groups to participate fully in society, but not be felt by them as a unilateral obligation to become indistinguishable from the mass. ECRI observes that the question of integration is at a particularly delicate stage in Germany at present: while the authorities have begun to move towards an important new understanding of the diversity of German society today and of measures that may be needed to ensure that all members of today's society are able to participate fully, it seems that this understanding – which itself is still evolving – has not yet filtered through to German society as a whole. The protests that frequently accompany proposals to build new mosques are a striking example of the gap between the majority society's view of present-day Germany and the reality of the latter's diversity. In this context, the experience of immigrants is that the onus to integrate is placed very much on them: while the investment of resources in the National Integration Plan is noteworthy, the sense at grassroots level is that it is only migrants who are being asked to make individual efforts to adapt to the environment they live in. At their worst, the debates surrounding integration, including discussions on "parallel societies", may have contributed to creating an impression amongst migrants that understanding and respecting the German constitutional order is not enough: some migrants are left with the impression that they will only be welcome in German society if they dress, look and think like the majority population.

148. ECRI strongly encourages the German authorities in their efforts to assist migrants to learn German. In this context, it recommends that everything be done to ensure that measures taken to achieve this result do not have a counter-productive effect on integration, by stigmatising those whose mother tongue is not German or endangering their individual rights.
149. ECRI strongly encourages the authorities to develop further other aspects of the National Integration Plan, aiming to support immigrants through measures in such fields as education, employment, health, sports and the media. It recommends that the authorities pay particular attention to developing programmes to help German citizens be more receptive to the diversity of contemporary German society.
150. ECRI recommends that the German authorities keep under review the new, national, naturalisation test, and in particular its impact on applications for naturalisation, both made and granted, in order to ensure that it does not have a counter-productive effect and to allow corrective measures to be taken if necessary.

VI. Antisemitism

151. In its third report, ECRI recommended that the German authorities continue and intensify their efforts to address all manifestations of antisemitism in Germany. As described above,⁴⁸ the German authorities have adopted a broad range of measures aimed at fighting right-wing extremist crimes, including antisemitic crimes.
152. Nonetheless, from 2005 to 2007, the number of right-wing politically motivated offences with an extremist and antisemitic background registered by the Federal Criminal Police Office (BKA) hovered at around 1600 each year, i.e. an average of more than 30 such crimes each week. While the numbers declined slightly each year during this period, preliminary figures for the first three quarters of

⁴⁸ See above, *Racist violence*.

2008 showed an increase of 10% on the same period in 2007.⁴⁹ The most frequently reported offences involved the desecration of Jewish cemeteries or other monuments. In some cases gravestones were knocked over; in others, graffiti was sprayed, including the use of swastikas and other Nazi symbols. As regards violent antisemitic crimes, 49 such crimes were registered in 2005, 43 in 2006 and 59 in 2007. Alongside these crimes involving violence against persons or property, antisemitic and neo-Nazi hate speech also continue to be of deep concern.⁵⁰

153. The German authorities regularly condemn such crimes. They also pursue perpetrators and bring them to justice where possible. Numerous charges with respect to Holocaust denial or the use of Nazi symbols have thus been brought since ECRI's third report.⁵¹ At same time, a wide range of measures are taken to atone for the past and ensure remembrance of the victims of the Holocaust. These include the ethnic German repatriation programme, thanks in part to which there are now estimated to be around 110 000 Jews or people of Jewish origin living in Germany; memorial ceremonies organised to mark anniversaries of significant events during or leading up to the Holocaust; and the reopening of synagogues. In the week prior to the seventieth anniversary of the Night of Broken Glass riots of 9 November 1938, the lower house of the federal parliament also adopted a resolution renewing its commitment to counter every form of anti-Jewish hatred and antisemitism and urging the government to continue supporting and protecting Jewish life in Germany, expand teaching in schools on Jewish life in Israel, and set up a group of experts to issue a regular report on antisemitism in Germany.
154. ECRI salutes the authorities' commitment to denouncing and combating all forms of antisemitism and to supporting Jewish culture in Germany. It stresses nevertheless the need to make constant efforts to ensure that these words are translated into concrete actions. With antisemitic crimes apparently on the rise at present in Germany, even more intensive efforts may be needed to reverse such a trend.
155. ECRI recommends that the German authorities continue and intensify their efforts to combat all manifestations of antisemitism in Germany. It stresses the role to be played by the various opinion leaders in society, be they politicians, religious groups, the media or civil society, in consistently speaking out against any manifestations of antisemitism.

VII. Conduct of Law Enforcement Officials

156. In its third report, ECRI made a number of recommendations relating to the conduct of law enforcement officials, calling for the establishment of an independent body entrusted with the investigation of allegations of ill-treatment by police officers, recommending that training in intercultural competence and to raise the awareness of law enforcement officials of the issues of racism and direct and indirect racial discrimination be provided to police throughout the territory of Germany, and calling for measures to ensure adequate representation of members of minority groups in the police.
157. Since ECRI's third report, several persons belonging to visible minorities have died either at the hands of police officers or while in police custody. ECRI notes

⁴⁹ By definition, the preliminary figures are subject to change. The German authorities have pointed out that differences in reporting patterns between the *Länder* make it difficult to predict how far the final figure will vary from the preliminary reports.

⁵⁰ See above, *Racism in public discourse*.

⁵¹ See above, *Racism in public discourse*.

that such events could reveal particularly serious breaches of fundamental rights and stresses that an effective investigation into such deaths, including into any allegations that a racist motivation may have played a part in events, is a key part of the rights protected under Articles 2 and 14 of the European Convention on Human Rights.⁵² It also underlines that the authorities' capacity to respond rapidly and effectively to suspected cases of ill treatment by law enforcement officers is crucial in maintaining the confidence of society as a whole in the law enforcement system.

158. Elsewhere in this report, ECRI has drawn attention to the treatment of Black victims of racist violence as "second-class" victims when they turn to the police for help.⁵³ It notes, moreover, that NGOs consistently report higher numbers of incidents of racist violence than police, a fact that suggests that some victims may lack confidence in the police to deal effectively with their case.
159. ECRI is also concerned at the publication in 2005, in a journal distributed to over 20 000 police officers, of a letter to the editor that was subsequently found by the UN Committee for the Elimination of Racial Discrimination to have included comments of a "discriminatory, insulting and defamatory nature" towards Roma, which were "of particular weight...if made by a police officer whose duty is to serve and protect individuals."⁵⁴ The failure of the relevant police association since to distance itself from this letter is disturbing. ECRI is concerned that this situation may reveal deeper or more widespread prejudices within the police force towards certain groups, prejudices which should be combated as a matter of urgency. ECRI welcomes in this context the recognition by the higher echelons of the police of the importance of awareness-raising and other measures to increase the intercultural competence of police officers at all levels.
160. ECRI stresses the importance of setting up an independent investigatory mechanism which can carry out enquiries into allegations of police misconduct and, where necessary, ensure that the alleged perpetrators are brought to justice, and reiterates its call for the establishment of such a body in Germany.
161. ECRI also reiterates its recommendation that the German authorities ensure that training in intercultural competence and training to raise the awareness of law enforcement officials of the issues of racism and direct and indirect racial discrimination is provided to police throughout the territory of Germany. It further recommends that the German authorities take steps to introduce a network of trained officers responsible for serving as a point of contact between the public, and especially members of minority groups, and the police, and for helping to increase the two groups' understanding of each other.

VIII. Monitoring Racism and Racial Discrimination

162. In its third report, ECRI emphasised that, if done in accordance with European laws, regulations and recommendations on data protection and the protection of privacy, and the principle of freedom of declaration, the collection of data disaggregated by ethnic origin could help the authorities to better assess the situation of the various minority groups living in Germany in different fields of life, such as employment, housing and education.
163. The German authorities have indicated that data are collected in Germany by reference to people's religion, citizenship, gender and age, but not on the basis of

⁵² See in particular *Nachova and Others v. Bulgaria*, Applications nos. 43577/98 and 43579/98, Judgment of 6 July 2005 (GC), and subsequent case-law.

⁵³ See above, *Vulnerable/Target Groups – Black Community*.

⁵⁴ CERD/C/72/D/38/2006

ethnic origin. Some minority groups do not wish the last criterion to serve as a basis for data collection; others, however, believe it is important. The authorities have indicated that there are other means to estimate the number of members of specific groups, that may be preferable. In the light of repeated recommendations by international bodies, they have, however, commissioned a study to examine whether it is desirable, permissible by law and necessary to collect such data.

164. ECRI reiterates its recommendation that the German authorities improve their monitoring systems by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin. It emphasises that this should in all cases be done with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the possible existence of double or multiple discrimination.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the German authorities are the following:

- ECRI strongly recommends that the German authorities take a more proactive role in raising awareness of the legal framework now in force against racial discrimination, notably among groups who are especially vulnerable to this phenomenon. To this end, ECRI recommends that the authorities run an awareness-raising campaign specifically targeted at ensuring that potential victims of racial discrimination are aware of the existence and scope of the General Equal Treatment Act (AGG) and of the mechanisms for invoking their rights before the courts.
- Bearing in mind that no immediate move away from the present streaming system for secondary schooling in Germany has been envisaged, ECRI recommends that the German authorities take urgent steps to implement targeted training programmes to ensure that all teachers have the capacity to assess objectively the skills of students due to enter the secondary school system, in order to ensure that students are not sent to schools in the lower academic streams unless this is strictly necessary.
- ECRI strongly recommends that, as part of their ongoing efforts towards creating a workplace free of racism, the German authorities launch an awareness-raising campaign aimed specifically at changing employers' attitudes towards persons with an immigrant background. This campaign should focus not only on employers' obligations and liabilities under the new General Equal Treatment Act (AGG) but also on the positive aspects of diversity in the workplace. It could form part of a regular series of such campaigns.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

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