

# Report on Germany by the European Commission against Racism and Intolerance (ECRI)

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## I. ECRI and Its Work

[1] The Council of Europe on July 3, 2001, released the Second Report on Germany prepared by its European Commission against Racism and Intolerance (ECRI). (1) ECRI is a mechanism to combat racism, xenophobia, antisemitism and intolerance that was established by the Heads of State and Government of the Member States of the Council of Europe at their Summit in Vienna on October 9, 1993, and improved during the Strasbourg Summit held on October 10-11, 1997.

[2] Each Member State of the Council of Europe is entitled to nominate one member to the Commission. (2) They are, in most cases, recruited from the senior ranks of the national Civil Service, from Universities, Politics or NGOs. According to ECRI's mandate, they should be independent and recognised as experts in the field of racism and xenophobia. One of ECRI's tasks is the preparation of country reports. At the end of 1998, ECRI completed a first round of reports, in January 1999 the work on the second stage of country reports began, which will continue until December 2002.

[3] ECRI's reports are first transmitted as a draft to the concerned Member State for a process of confidential dialogue with the national authorities. The content of the report is reviewed in the light of this dialogue. The report is then adopted in its final form and transmitted by ECRI to the government of the Member State concerned, through the intermediary of the Committee of Ministers of the Council of Europe. The report is made public two months after this transmission, unless the government in question is expressly opposed to the publication.

[4] The aim of these second reports within ECRI's country-by-country work is to follow-up the proposals made in the first reports, (3) to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

## II. Summary of the Report

[5] The recently published Second Report on Germany comes to the conclusion that Germany is a society in which serious incidents of racially motivated violence occurs. The report deduces from this conclusion that issues of racism, antisemitism, xenophobia and intolerance are yet to be "adequately acknowledged" and confronted. The existing legal framework and policy measures in Germany have not, according to the Report, proven to "be sufficient to effectively deal with" or solve these problems. The ECRI Report expressed its deep concern about the situation of and attitudes towards those who are considered "foreigners" and about Germany's insufficient efforts at promoting integration. The ECRI Report stated that Germany's identity may also be associated with other forms of identity than the traditional. The detailed Report criticises Germany heavily on policy issues.

[6] The implementation of a conclusive response to the criticisms in the ECRI Report would, however, have far reaching consequences for the German constitutional system.

[7] The Report consists of two sections. The first section contains an overview of the situation in Germany, dealing with legal instruments, institutions, the reception and status of non-citizens, refugees and asylum-seekers, foreigner's access to public services, vulnerable groups and the conduct of certain institutions and the media. To emphasise a few of the Report's details:

a) *ECRI recommended, again, that Germany should make a declaration under Article 14 of the Convention for the Elimination of All Forms of Racial Discrimination, recognising the competence of the Committee for the Elimination of Racial Discrimination (CERD) to accept individual complaints.*

b) *Germany should review its opposition to dual nationality. According to the ECRI Report there is a general trend amongst European States to move towards a more flexible approach as regards the issue of dual nationality. This approach is in accord with the European Convention on Nationality. The ECRI Report points out that efforts should be made by public officials to reduce the drama associated with this issue in the public arena. In this respect, the ECRI Report also criticises German Nationality Law that specifies a number of requirements that all individuals applying for naturalisation must meet, e. g. sufficient knowledge of the German language and a commitment to the Basic Law.*

According to the ECRI Report, such criteria, although not in themselves discriminatory, might potentially lend themselves to arbitrary and discriminatory application by German authorities.

c) Moreover, there is a lack of specific anti-discrimination legislation at the federal level prohibiting racial discrimination in key fields of public life, such as housing, education, health, employment and the provision of goods and services. Although the German constitutional guarantee of equality covers these fields, according to the ECRI Report, this guarantee would be strengthened by supplemental legislation in specific fields. An independent specialised body on combating racism and intolerance could supervise the implementation of such legislation. Finally, Germany still lacks at the national level, a commission or ombudsman with the authority to accept individual complaints and assist victims in pursuing these complaints.

d) The ECRI Report expresses concern over reports of deportations of people at risk of human rights violations in their countries of origin, contrary to the principle of non-refoulement (see Article 33 of the Geneva Convention on the Right of Refugees and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms). The ECRI Report draws particular attention to reports of cases of Roma and other minorities from Kosovo who are being forcibly deported despite assurances by the Federal authorities that no minorities will be sent back against their will. The conditions associated with of "pre-field control" (the length of time taken to process asylum applications and the poor living conditions of asylum seekers while their applications are pending) were expressly mentioned as points of critique.

[8] The second section of the Report draws attention to certain issues of particular concern to Germany, especially the challenge of integration and racist/antisemitic violence and harassment.

[9] Under the heading "Challenges of Integration," the ECRI Report concludes in the second section that Germany does not regard itself as a country of immigration:

*ECRI is of the opinion that an increased recognition within German society of its diverse composition and of the positive contribution made by individuals of foreign origin would contribute greatly to solving many of the problems of racism and discrimination and to the richness of German society as a whole. (4)*

[10] In this respect, the ECRI Report addresses a major political debate that has occupied Germany for much of the last year, namely the concept of *Leitkultur* (defining culture). This term expresses a homogenous understanding of German identity and an accompanying fear about the effects diversity will have on that homogenous cultural identity. It also reinforces negative stereotypes about other cultures, neglecting the value and important contribution of minority communities within Germany.

[11] The ECRI Report identifies racist and antisemitic violence as one of the most pressing and dangerous expressions of racism and intolerance in Germany. The Commission analyses legislation, its enforcement and especially the climate of opinion. The ECRI Report assumes that, although a relatively small number of individuals perpetrate racist and antisemitic crimes or actively support extremist groups perpetrating such crimes, a much greater number of people may sympathise with certain of the racist, xenophobic and antisemitic ideas. In its report ECRI registers its belief that an increased acknowledgement of modern Germany as one in which various forms of identity can be associated with the traditional German identity would contribute to creating a climate where diversity is appreciated. The ECRI Report observed a tendency amongst German authorities and the media to portray the problem of racist and antisemitic violence and harassment as a special if not exclusive problem of the former East Germany. In this context, the ECRI Report draws attention to the manner in which transition occurred and to problems associated with discrimination of Eastern Germans by Western Germans, e. g. a difference in pay between Eastern and Western *Länder* (Federal States). This has created, amongst some, a sense of injustice which influences East German youth and the general climate of intolerance in the area.

### III. Reaction

[12] Attached to the Report is an appendix with 4 pages of observations provided by the German Federal Government. The Government, represented by the Federal Ministry of the Interior, answered ECRI's critique as much too "sweeping and not reflecting the actual situation" in Germany. The Government's response especially took exception to the assertion that Germany's statutory naturalisation criteria might lend themselves to discrimination in their application.

[13] After harsh public criticism from the German Minister of the Interior, Otto Schily, and the Vice-President of the Jewish Council in Germany, Michel Friedman, the Vice-General Secretary of the Council of Europe, Hans Christian Krüger, partially retreated from the Report's findings during an interview with a German newspaper. (5) He stated that Germany does, indeed, do quite a lot to combat racism and intolerance and that the ECRI Report did not

acknowledge this adequately. He further stressed that not every single word of the Report should be read as a judgement, but that the most important impact of such a report is that it is apt to spark a much better debate on the issues concerned.

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- (1) CRI (2001) 36, <http://www.ecri.coe.int/en/08/01/13/CBC%20%20Germany.pdf> .
  - (2) A Members List is available under <http://www.ecri.coe.int/en/08/04/01/01.htm>.
  - (3) The first Report on Germany was adopted on February 7, 1997, and published March 1998.
  - (4) Paragraph 42.
  - (5) *Europarat revidiert Rassismus-Vorwurf*, WELT AM SONNTAG, July 8, 2001  
<http://www.welt.de/daten/2001/07/08/0708de266341.htm>.