THE RIGHT TO NONDISCRIMINATION. THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE – A MONITORING BODY OF THE COUNCIL OF EUROPE

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Abstract

Along the last six decades, the Council of Europe, as an international regional organization, generated a complex body of both binding and non-binding legal instruments. The importance of non-binding legal documents, also identified as European soft-law, is demonstrated by the Council of Europe's constant and growing involvement in monitoring activities and the creation of non-conventional monitoring structures, particularly in the field of human rights. One such structure is the European Commission against Racism and Intolerance (ECRI), which, throughout its' broad and complex areas of competence has helped define and consolidate the European framework in matters of broadly identified as racial discrimination. ECRI had also brought a substantial contribution to the adoption of the 12th Protocol 12 of the European Convention on Human Rights (ECHR) and to the consolidation of related case law before the European Court for Human Rights (ECtHR).

Keywords: *Council of Europe, ECRI, non-discrimination, racial discrimination, soft-law, recommendations, monitoring.*

1. The Council of Europe and the rule of law. The importance of monitoring activities as *early warning* instruments.

Democracy, the rule of law and the respect for human rights and fundamental freedoms are the original common values of the Council of Europe, that continue to unite the 47 member states.

According to its Statute, the Council of Europe, as a regional intergovernmental organization of *cooperation*, does not have supranational competences. Thus, legally binding obligations originated in the activity of the organization, can not be imposed on member states. For instance, wthin the framework of the European institutional architecture, the Council of Europe endevours to elaborate an important **common european conventional network**, in various fields of cooperation[1]. Those Conventions are not compolsury, they are *only recomended* for ratification to the memberer States of the Council of Europe[2].

Safeguarding the respect of human rights and strengthening of neccesary democratic reforms can thus be achieved by establishing common standards of conduct**,** that has been and continues to be a difficult task that member States have assigned to the organization. Since such standards are not legally binding[3], compliance is achieved by means of a specific system that promotes them, which consists of: elaboration of *soft law* regulations and introduction of a variety of *monitoring activities* for their implementation.

The European *soft law* regarding human rights. The concept of ***soft law*** in contemporary international law has a variety of meanings; its most generally accepted description is that of *a legally non-binding instrument*. It describes *inter alia* some UN General Assembly resolutions, declarations of international conferences, guidelines, codes of conduct, common standards of conduct, or certain general "principles" to be observed in different international interactions.

- **Monitoring mechanisms.** According to international institutional law, **monitoring activities** in international organizations pertain to the more general concept of **supervision**, which includes all methods by which "*Member States are encouraged to comply with the rules, not only by the threat of sanctions being imposed for non-compliance, but also through the possibility that there will be some form of supervision or official recognition of violations.*"[4]

In the European context, monitoring the respect of human rights is seen as „the starting point for a clear understanding of the nature, extent, and location of the

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[1] A total of 215 Conventions were adopted, as to September 2014.

[2] Among them,only the European Convention on Human Rights and Fundamental Freedoms (**ECHR**),adopted by the Council of Europe as early as 1950 and entered into force in 1953, has particular normative consequences for the states that ratify it. The Convention sets up the European Court of Human Rights (**EctHR**), as an important jurisdictional *supranational* body, since the Court judgements impose legal obligations upon States parties.

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[4] H.G.Schermers, N.M. Blokker, *International Institutional Law,* Nijhoff Publ.,p.864-866.

problems which exist and for the identification of possible solutions".[5]

For almost sixty years, the Council of Europe has constantly perfected the functioning of several now well-established **independent bodies** endowed with the task of *monitoring* a wide variety of standards in member States and *anticipating* possible malfunctioning[6]. The expertise and professionalism of these bodies allows the Council of Europe to pinpoint non-compliance issues and offer *recommendations* to its Member States.

There are two categories of such monitoring mechanisms: Convention based structures and Non-conventional monitoring structures.

- ***Convention based structures*** are**:** The **European Committee for Social Rights,** created by the the *European Social Charter*; the **Committee for the Prevention of Torture** within the *European Convention for the Prevention of Torture*; the **Consulting Committee** of the *Framework Convention for the Protection of National Minorities*; the **Committee of Experts** of the *Charter for Minority Languages;* the **Group of Experts on Action against Trafficking in Human Beings** (GRETA), acting within the framework of the *Convention on Action against Trafficking in Human Beings* [7].

All the afore mentioned bodies are set up with the task to evaluate ,at regular intervals, each State Party's compliance with the respective treaty provisions.They recommend improvements in legislation, policy and practice in each of the state parties.The results of those monitoring activities are eventualy presented to the Council of Europe's main institutional structures - the Committee of Ministers, Secretary General and Parlamentary Assembly. This way the members of the 47 National Parliaments are constantly informed about the application of the provisions of the respective Convetions and are able to exert, if necessary, political pressure in encouraging national governments to take appropriate measures[8].

- ***Non-Conventional Monitoring Structures*** set up within the Coucil of Europe are: **The Commissioner for Human Rights** was established in 1999, by Resolution (99) 50**),** as an independent institution, mandated to promote awareness of and respect for human rights in the 47 member states. The activities of the Commissioner and his Office focus on three major, closely-related areas: a system of *country visits* and *dialogue with national authorities and civil society* to identify vulnarabilities and key issues in the countries visited; *thematic work* and *awareness-raising activities*, such as the release of opinions regarding specific human rights issues. Since the entry into force of Protocol No. 14 to the ECHR, the Commissioner has the right to intervene *ex officio* as a third party in the Court's proceedings, by submitting written comments and taking part in hearings[9].

The Committee of Experts on the Evaluation of Anti-Money Laundering Measures, set up in1997 is an anti-money laundering evaluation and peer pressure mechanism, subsequently renamed **Moneyval**. After the events of 11 September 2001, Moneyval's terms of reference were revised by the Committee of Ministers of the Coucil of Europe, to include compliance with the relevant standards on terrorist financing, as some of the techniques which apply in money laundering are relevant also in identifying terrorist financing. Currently 28 Council of Europe member states are evaluated by Moneyval[10].

The Group of States against Corruption (GRECO). Over more than a decade of efforts to combat economic crime (including, inter alia, bribery) at European level, in 1994, Ministers of Justice of Council of Europe member States agreed that corruption should be addressed at European level, as it poses serious threats to the stability of their democratic institutions. In 1997, at the 2nd Summit of Heads of State and Government of the Council of Europe, Member States decided to intensify their anti-corruption efforts and adopted *Twenty Guiding Principles against Corruption* (Resolution (97) 24) and on the 1st of May 1999, the **Group of States against Corruption (GRECO)** was set up by 17 founding Member States (Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Spain and Sweden)[11]. By *monitoring compliance with Council of Europe anti-corruption standards*, GRECO aims at improving the capacity of Member States to fight corruption. Through mutual evaluation and peer pressure, it helps to identify deficiencies in national anti-corruption policies, promotes the necessary legislative, institutional and practical reforms, provides a platform for the sharing of best practices in the prevention and detection of corruption[12].

[5] See Ph. Alston, J.H.H.Weiler, Introductory remarks in *The EU and Human Rights* (Ph. Alston, ed., 1999).

[6] "*The Council of Europe must be the lighthouse of Europe, a house for early warning"*(Thorbjorn Jagland, the Council of Europe's Secretary General, at the Ministers' Deputies' meeting on 20 January 2010)

[7] GRETA is a multidisciplinary panel of 15 independent experts set up as a mechanism to monitor compliance with the obligations contained in the *Convention on Action against Trafficking in Human Beings*, adopted by the Council of Europe in May 2005.

[8] http://.www.coe.int/minlang/

[9] http://www.commissioner.coe.int/tical

[10] http://www.coe.int/Moneyval/

[11] At present, all Member States of the Council of Europe are participating in Greco.

[12] http://www.coe.int/greco

2. The inception of the European Commission against Racism and Intolerance (ECRI), as a non-conventional monitoring body of the Council of Europe.

The fight against racism and discrimination has always been one of the *raison d'etre* of the Council of Europe, whose historical and political roots go back to the Second World War and the need to prevent its horrors from happening again. For over 50 years, efforts to promote tolerance have been at the heart of the Council's work, reflected in its various institutional structures and programs in political, legal, social and cultural fields.

In the early 90s the upsurge of racist violence in Europe and other parts of the world gave a new urgency to this combat. In October 1993 the Vienna Summit of the Council of Europe's Heads of State and Government decided to set up a new specialized body -**European Commission against Racism and Intolerance (ECRI**), as a monitoring mechanism to combat manifestations of **racism, xenophobia, anti-Semitism and intolerance**, from the perspective of fundamental human rights protection, in all the Member States of the Council. The decision to establish ECRI was taken at the highest political level and was the result of the conjoint will of the European Heads of State to give a new impetus to the fight against racism and discrimination in Europe. [13] In October 1997, the second Summit of the Council of Europe, held in Strasbourg, strengthened ECRI's action and in 2002 the Committee of Ministers of the organization granted ECRI **autonomous Statute**[14], thereby consolidating its role as an independent human rights monitoring mechanism to combat manifestations of racism and other forms of racial discrimination in all Member States of the Council of Europe.

3. General mandate, composition and functioning.

ECRI's general mandate was conceived to provide the Council of Europe's Member States with concrete and practical advice on how to tackle problems of racism and discrimination in their respective countries. To this end, it examines the legal framework for combating racism and racial discrimination in **each country**, its practical implementation, the existence of independent bodies to assist victims of racism, the situation of vulnerable groups in specific policy areas (education, employment, housing, services etc.) and the tone of political and public debate around issues relevant for these groups. As previous experience has proven, all these concepts and circumstances are changing and can take different forms, covering not only the most blatant abuses of human rights, such as state-sanctioned segregation, apartheid or Nazism, but also other, more subtle forms of racism and discrimination, which are nonetheless harmful means of differential treatment experienced in everyday life. They can include the targeting of persons on the grounds not only of race or ethnic origin, but also of religion, nationality or language, or a combination of such grounds.

The Commission is made up of 47 members – one from each Member State of the Council of Europe. Members are appointed by Member State governments, for a renewable term of five years in accordance with the following terms of ECRI's Statute: *The members of ECRI shall serve in their **individual capacity**, shall be independent and impartial in fulfilling their mandate. They shall not receive any instructions from their government*.

ECRI meets and takes its decisions in Plenary Sessions, held in Strasbourg, three times a year. **Working groups**, made up of different ECRI members, prepare the drafts of ECRI's future decisions. The continuity of the activity is assured by a permanent Secretariat, provided by the Council of Europe within the Directorate General of Human Rights and the Rule of Law.

4. ECRI as a monitoring body of the Council of Europe.

As opposed to other monitoring bodies within the Council of Europe, whose mandates are treaty-based[15], ECRIs monitoring activities are not based on the stipulations of a specific treaty. Its role lies mainly in *detecting and signaling manifestations* of racism, xenophobia, anti-Semitism and intolerance within all Member States. A distinct characteristic of ECRIs mandate resides in the fact that it takes into consideration not only the extreme and serious manifestations of human rights violations, but also *those encountered in everyday life*, which can build up to constitute important obstacles to equality and nondiscrimination. Another characteristic of ECRIs more recent activity is the extension of its monitoring focus to also include *new categories of vulnerable groups* (such as migrants and asylum seekers). In addition to this, ECRI pays particular attention to racist *hate speech* and violence and also to effective *anti-discrimination legislation* in Member States.

[13] See *Declaration and Plan of Action on Combating Racism, Xenophobia, Antisemitism and Intolerence*, 9 Oct.1993.

[14] See Appendix to the Council of Europe Resolution (2000)8.

[15] See *supra* I.1. - European Court of Human Rights – the European Convention for the Protection of Human Rights and Fundamental Freedoms (http://www.echr.coe.int); European Committee for Social Rights – the European Social Charter; Committee for the Prevention of Torture – the European Convention for the Prevention of Torture (http://www.cpt.coe.int); Consulting Committee – Framework Convention for the Protection of National Minorities;Commitee of Experts-Charter forMinority Langueges.

3.1. The "three pillars" of its activity.

ECRI statutory activities are put in practice through three main components ("pillars"):

- *Country-by-country monitoring* of the phenomenon of racism, discrimination and intolerance in each Member State of the Council of Europe. In the light of relevant findings and accomplishments in each country visited by ECRIs experts, individual ***Country Reports*** are drafted and **specific recommendations** are formulated, for concrete improvement measures in the fight against racism and discrimination.
- Work on general themes, which consist of drafting *General Policy Recommendations* (GPRs), covering the main domains of racism, intolerance and discrimination.
- *Relations with the civil society*, in each Member State, by information and communication activities, with the aim of *awareness-raising* on issues under ECRIs mandate.

4.1.1. Country-by-country monitoring.

In the framework of its *country-by-country monitoring*, ECRI examines the situation concerning manifestations of racism and intolerance in each of the 47 Council of Europe Member States. The findings, along with specific recommendations as to how each country should deal with the problems identified, are published in separate documents as **Country Reports.** These Reports are drawn up after a **contact visit** to the country in question and a confidential dialogue with the national authorities. The country-by-country monitoring takes place in 5-year-cycles, covering nine/ten countries per year. The *fourth round* of country-by-country monitoring procedure ended in 2012 and the *fifth round* is in progress.

3.1.2. General Policy Recommendations (GPRs).

Prepared and adopted by ECRI plenaries, the GPRs are addressed to all Member States. They contain guidelines on general themes related to ECRI's specific mandate, covering some important issues, such as: key elements of national legislation to combat racism and racial discrimination (GPR No. 7); the creation of national specialized bodies to combat racism and racial discrimination (GPR No. 2); combating racism against Roma and antigypsism (GPR No. 3 and GPR No. 13); combating islamophobia (GPR No. 5), racism on the internet (GPR No. 6); combating racism while fighting terrorism (GPR No. 8); anti- Semitism (GPR No. 9); racism and racial discrimination in the activity of the police (GPR No. 11); education (GPR No. 10); sports (GPR No. 12) and employment (GPR No. 14).

Relations established with civil society

Combating racism can only be effective if the anti-racism message filters down to society in general. For this reason, awareness-rising among the general public and a communication strategy are crucial. In 2002 ECRI adopted a **Program of action** to consolidate this aspect of its work, which involves, among others: **Round tables** in different member States, cooperation with other interested parties in each country, as NGOs, the media and youth sector. The round tables are frequently organized upon publication of the last Country Report in a particular member State.

3.1.3. Interdependence between ECRI activities.

Activities carried on through ECRIs "three Pillars" are not separate from each other but *closely linked and interdependent.* The C**ountry Reports (1)** bring to light particular problems and, taken as a whole, highlight the main trends in all Member States of the Council of Europe. Some of these trends call for concerted and carefully considered strategies, which ECRI develops when drafting **General Policy Recommendations (2).** Implementation of all the recommendations, general and country-specific, is promoted through **information and awareness-rising activities** involving the civil society, on national and international level **(3)**.

3.2. Specific working methods and procedures within ECRI.

Since its first meeting in March 1994, ECRI action developed on a ***step-by-step*** principle. The strategy has been to gradually build up activities and procedures, thus ensuring that, in line with its founding documents, those activities are constantly evaluated, consolidated and used as a basis for the next step forward.

3.2.1. Concerning the ***country by country monitoring*** ("Pillar 1"): The research, drafting and adoption of all Country Reports follow some **basic stages**, in order to reach the best impact of this activity:

1st stage - A working group, formed of 5 ECRI members, examine the information and prepare ***a monitoring visit,*** which takes place, in each Council of Europe member State. Two of the rapporteurs carry out the visit, where they meet and exchange information with both government and the civil society partners. On the basis of the information gathered, ECRI plenary adopts a ***draft Country Report.***

2nd stage - The draft report is sent to the authorities, through the *national liaison officer* (NLO), for comments. The draft report may be revised in light of the comments of the authorities (only concerning *factual errors*). ECRI plenary adopts the ***final report***.

3rd stage - The Report is sent by ECRI to the government in question through the *intermediary* of the Committee of Ministers of Council of Europe. Only after presentation to the Committee of Ministers, the final Country Report is published.

3.2.2. The principle of reporting on an "equal footing". The structure of all Country Reports follows a **uniform pattern**, reflecting ECRI's mandate and its concern to treat all member States, regardless of their particularities, *on an equal footing.* Thus, the <Table of contents> of any Country Report comprises information, evaluations and recommendations on the following issues:

- the country's legal and institutional framework, relevant for ECRIs mandate: ratification or signing of the important human rights treaties; antidiscrimination legislation -constitutional, criminal, civil and administrative law provisions- and the degree of their implementation;
- in each Country Report, a number of the same **core issues** are examined: **discriminations in various fields -**education, employment, housing, healthcare, services; **manifestations of racism,** such as racist violence, anti-Semitism, racism in public discourse, conduct of law enforcement officials, hate speech, racism on the internet; the situation of **particularly vulnerable groups** facing discrimination, in each country. Vulnerable/target groups may vary, from country to country, in connection with internal or international events.
- in each country report a number of different **specific recommendations** are formulated, regarding different critical areas of discrimination identified in the countries visited.

3.2.3. Constant procedural improvements. ***Four rounds*** of Country Reports were accomplished until 2012 and the ***fifth cycle*** of country reporting is in progress since 2013.One of the new and important elements already introduced in the fourth round of reporting is an ***interim follow-up procedure***. It consists of selecting, from all the recommendations formulated in each Report, ***two or three specific recommendations,*** for which ***priority implementation is requested***, after a **two years period**. Those recommendations should be ***important, feasible*** and ***measureable.*** Two years after the publication of the Report, ECRI will address a "communication" to the government in question, asking whether those specific recommendations, for which priority implementation was requested, have actually been put into effect.

In line with other procedural improvements, are also the Appendices which, at the governments request, might be attached to the Country Reports, containing particular governmental view points; they are transmitted by the Governments, at the end of the confidential dialogue with ECRI and may still be changed or amended by the government in question, at the meeting of the **Committee of Ministers of the Council of Europe**, during which **the final Country Report** is transmitted to the government.

4. The role of ECRI in the adoption of the 12th Protocol of the European Convention on Human Rights.

4.1. From the principle of equality to the assertion of a right to nondiscrimination.

In the context of the protection of human rights and fundamental freedoms, the concept of nondiscrimination, was expressly advanced as early as 1948, in the United Nation's Universal Declaration of Human Rights. **Art.7** of the Declaration reads as follows:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against incitement to such discrimination.[16]

In the UN Covenant on Civil and Political Rights of 1966, nondiscrimination is viewed as a prerequisite for the effective application of the principle of equality and thus, attached to all fundamental human rights and freedoms. **Art.26** of the Covenant reads as follows:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[17]

From a different perspective, **Art. 14** of the European Convention for the protection of Human Rights and Fundamental Freedoms (European Convention/ECHR), entered into force in 1953, prohibits discrimination **only** if affecting the rights secured by the Convention:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The main argument for limiting the application of Art. 14 to the rights sanctioned by the Convention and oposing the adoption of a general prohibition clause on racial discrimination was the fear that generalizing nondiscrimination would result in a host of legal interpretations, thus introducing uncertainity in the case-law of the European Court of Human Rights.

4.2. The adoption of the 12th Protocol to the European Convention on Human Rights.

In view of these "limits" set by Art.14 of the ECHR for the application of the nondiscrimination clause, insistent calls were registered from some quarters within the Council of Europe for the scope of

[16] UN General Assembly Resolution 217 A (III),adopted December 10th 1948.

[17] See UN General Assembly Resolution 2200 A (XXI) adopted December 16th 1966; the Covenant on Civil and Political Rights entered into force on March 23th 1976.

nondiscrimination to be extended, in order to cover **all forms of discrimination**. For that purpose the Parliamentary Assembly of the Council of Europe put forward repeated Recommendations asking the Committee of Ministers of the organization to widen the scope of the prohibition of discrimination by means of a new Protocol to the European Convention.[18]

Thus, in 1995 the newly created body of the Council of Europe, the **European Commission against Racism and Intolerance** (**ECRI**) drafted a document entitled "*Reasoned report on the reinforcement of the nondiscrimination clause of the European Convention of Human Rights".* ECRI's document pointed out that, in prohibiting discrimination, **Art. 14** of the European Convention of Human Rights did not go as far as other international instruments for human rights.[19]

Subsequently during 1994-2000, laborious negotiations were opened for drafting and adopting the text of a new Protocol to the ECHR. During all those stages, the activity within the newly created European Commission against Racism and Intolerance was closely linked to that endeavor.[20] The reason for ECRIs focus on the adoption of a new Protocol was mainly its concern for **effectiveness**: a normative instrument of that kind was urgently needed to combat new forms of racism and racial discrimination, of which there had been a noticeable upsurge in Europe in that period[21]. In ECRIs vew, the establishment of a general clause against discrimination on the ground of race, colour, language, religion or national or ethnic origin, conceived as **a fundamental human right**, would be a significant step towards effectively combating manifest violations of human rights which result from racism and xenophobia.

Eventually, on the 4th of November 2000, the 12th Protocol was signed in Rome. The Protocol entered into force on April 1st 2005, after ten ratifications. As of 2014, it has 18 Member States and 19 signatories.[22]

Art. 1 of the Protocol 12 to the European Convention reads as follows:

„General prohibition of discrimination.

1 .*The enjoyment of* ***any right set forth by the law*** *should be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

2*. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."*

Unlike Article 14 of the Convention, Protocol 12 extends the ECtHR jurisdiction to "any right secured by law". Thus, the Court can rule on cases of discrimination even in respect to rights not explicitly mentioned in the Convention, such as access to services, employment, housing, healthcare and also in relations with private parties.

5. Legal status of ECRI's documents as Council of Europe s*oft law* in human rights.

The ***specific recommendations*** in each Country Report and, in particular, the content of the **General Policy Recommendations** drafted by ECRI experts represent part of the Council of Europe *soft law* on human rights[23].

They *are not legally binding*, do not impose legal obligations on member States; their implementation resides in the Governments willingness to enact them on national level. The system is based entirely on the principle of cooperation and dialogue. Thus ECRI is not a mechanism competent to apply international "sanctions" against those Member States who do not implement the measures suggested.

In accordance with the international legal principle of national sovereignty, ECRI cannot itself change laws, policies and practices in Council of Europe Member States. The methods available to fulfill its mandate, being specific for the Council of Europe as an international organization of cooperation, include: awareness-rising, dialogue, persuasion and, at some extent, horizontal political *peer-pressure*, mainly by means of dialogue between the representatives of the Member States, *within the Committee of Ministers* and the *Parliamentary Assembly* of the Council of Europe.

One example of ECRIs *soft law* document which has a particular contribution in defining the concepts in the fields of racism and discrimination is the ***GPR No.7 on national legislation to combat racism and racial discrimination.***[24] In order to effectively combat discrimination, **GPR No. 7** sets out a number of key elements for which it offers *legal definitions.* Thus, for the most important concepts within the remit of ECRIs mandate, GPR No. 7 recommends that those definitions should feature, uniformly, in all comprehensive national legislations.

In the process of drafting GPR no.7, the core concept of **„race"** received a particular attention. On the one side, the use of the term was challenged, considering that it could suggest recognition of the

[18] See, *J.Schokkenbroek,"*A new European Standard Against discrimination:Negotiating Protocole No.12 to the European Convention on Human Rights",in J.Niessen,Isabelle Chopin, *The Development of Legal Instruments to Combat Racism in a Diverse Europe,*Koninklije Brill NV, The Netherlands,2004, p.61.

[19] See, *L.Hollo,* "The European Commission against Rassism and Intolerence.Its first 15 years", Council of Europe Publishing,2009,p119-121.

[20] See, e.g., *M.Kelly*,"ECRI.10 years of Combating Racism", Cedex,2004,p.97-98.

[21] See, *M.Head*,"The Genesis of Protocole No.12",in *Non-discrimination:A human Right*,Coucil of Europe Publishing,2006, p.35-49.

[22] Romania ratified the 12th Protocol to the ECHR by Law no.103/3.05.

[23] See *Compilation of ECRI General Policy Recommandations*- www.coe.org/ecri

[24] See *G.Cardinale*,"The preparation of ECRI's General Policy Recommendation n°7 on National Legislation to Combat Racism and Racial Discrimination", in Revue du Droit Europeen relatif a la non-discrimination, Edition 5/2003.

existence of *different human races,* which is an inacceptable postulate of racist doctrines. On the other side, it was considered that the concept of race should be maintained on the ground that, in everyday life, victims of *racism* and *racial discrimination* are often erroneously perceived as belonging to 'another race'. Eventually, as an important clarification,the following foot note is accompaning the use of the term: „*Since all human beings belong to the same species, ECRI rejects theories based on the existence of different « races ». However, in this Recommendation 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 the protection provided for by the legislation"*.

Thus, ***racism*** is conceived in a very broad sense, covering not only "traditional" criteria, such as race, color, national or ethnic origin, but also other grounds as *language, religion or nationality:*

*"**Racism** ...shall mean the belief that a ground such as race,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."***

The importance of a clear distinction between **direct** and **indirect racism** should also be uniformly applied at national level, when dealing with racist manifestations: **"*Direct racial discrimination*** *shall mean any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification. Differential treatment has no objective and reasonable justification if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised".*

" *Indirect racial discrimination* *... shall mean cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied withby, or disadvantages, persons belonging to a group designated by a ground such as race, colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification. This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised."*

"*Racially motivated offences* - *„The law should penalize the following acts when committed intentionally: a) public incitement to violence, hatred or discrimination b) public insults and defamation or c) threats against a person or a grouping of persons on the grounds of their race, color, language, religion, nationality, a national or ethnic origin; d) the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, color, language, religion, nationality, or national or ethnic origin;"*

GPR No. 7 has also ***a wide scope****:* these uniform **legal concepts** and **definitions** are recommended to be adopted and applied in *all branches of national law* (constitutional, criminal, civil and administrative)**.**

The GPR No. 7 also points out the fact that *modern-day racism* includes not only manifestations aimed at *individuals* but also at *groups* and that it might be based on *one* or on *several of the grounds* above mentioned.

6. Contribution of ECRI to the development of the case-law of the European Court of Human Rights (ECtHR) on matters of racial discrimination.

Lately, more and more often**,** the decisions of the European Court of Human Rights make express references to ECRI's Country Reports and also to its GPRs, in cases involving, for instance, ***freedom of association and assembly*** (art.11 of the European Convention on Human Rights), ***freedom of speech*** (art. 10), ***racist violence and racial discriminations*** (art. 14).

In a case before the Court, brought by 16 Czech nationals of Roma origin (*D.H. and others v. Czech Republic)*, the applicants proved that, between 1996 and 1999, they were placed in special schools for children with serious learning difficulties. They complained that, on account of their Roma origin, they suffered discrimination in the enjoyment of their right to education, in violation of Article 14 of the European Convention on Human Rights. The Court decision, endorsing their complaints, referred in particular to the work of ECRI: Three Country Reports on the Czech Republic, in which such segregation practices were condemned; adoption of ECRI **GPR No. 3** on ***Combating racism and intolerance against Roma/Gypsies****;* the definitions of *racism* and *direct and indirect discrimination* contained in ECRI **GPR No. 7** on National legislation to combat racism and racial discrimination.[25]

In another case, brought before the Court by two Turkish citizens (*Hasan and Eylem Zengin v. Turkey)*, the Court found that religious culture and ethics lessons in Turkey could not be considered to meet the criteria of objectivity and pluralism necessary for education in a democratic society, because, favoring Islamism and the study of Koran, prevented the pupils to develop a critical mind towards religion. In its judgment, the Court quoted the analysis and specific recommendations made by ECRI in its third Report on Turkey, as well as ECRIs **GPR No. 5** on Combating intolerance and discrimination against Muslims[26].

In the case - *Nachova and others v. Bulgaria*, the Court, applying for the first time Article 14 of the

[25] See http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83258
[26] See http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82579

European Convention on Human Rights prohibiting discrimination, quoted extensively passages of ECRI Second and Third Reports on Bulgaria, in which discriminations against Roma were reported as violations of democracy; specific recommendation were also formulated[27].

7. Conclusion

Since its beginnings in 1993, ECRI has come a long way. Being a non-conventional mechanism of the Council of Europe, has allowed ECRI to expand its area of monitoring and to consider manifestations of racism and discriminations that were not foreseeable in the early 90, such as immigrants, asylum-seekers and refugees. In the aftermath of the terrorist attack of 9/11, Muslims in Europe also became the subject of increased surveillance, hate speech and even violence. The context in which ECRI functions has changed over the years, and some new trends have appeared, while other phenomena remain a constant concern on the European scene, as for instance, persistence of racial discrimination, which is closely linked to the rather precarious implementation of the anti-discrimination legislation in Member States.

The totality of ECRIs activities sums up as a comprehensive body of so called "jurisprudence" on legal, institutional and policy orienting guidelines to fight racism, discrimination and intolerance in all Council of Europe Member States, in matters such as civil and political rights, social rights, minority rights, treatment of persons deprived of their liberty, the fight against corruption and money laundering and against racism and intolerance.

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[27] See http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69631