

Input to OHCHR Expert workshops on prohibition of incitement to national, racial or religious hatred while ensuring respect of the freedom of expression

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I. Europe

1. Albania

1.1 Legislation prohibiting incitement to national, racial and religious hatred

A. Law 10221 on the Protection against Discrimination.

This law regulates the application and the observation of the principle of equity in relation to gender, race, colour, ethnic origin, language, gender identity, sexual orientation, political, religious or philosophic opinion, economic, educational or social status, pregnancy, parental belonging, age, family or matrimonial status, civil status, place of residence, health status, genetic predispositions, limited abilities, membership to a particular group, or any other reason.

B. Regulation of the Closed Centre for irregular foreigners.

The centre was built through EU assistance and is mainly intended for those foreigners to be sent back from EU countries to the Albanian territory.

2. Austria

2.1 Legislation prohibiting incitement to national, racial and religious hatred

Section 283 of the Criminal Code punishes incitement – in a manner likely to jeopardise public order – to hostile action against a church or religious community established in the country or a group defined by their affiliation to such a church or religious community, or to a race, nation, ethnic group or state (paragraph 1). It also punishes publicly agitating against such a group or insulting or disparaging it, in a manner that violates human dignity (paragraph 2). At the same time, under Section 115 of the same code, it is an offence to insult, in public or in the presence of several others, mock, injure or threaten to injure a third person; Section 117(3) states that such offences shall be prosecuted ex officio by the Public Prosecutor (Ermächtigungsdelikt), subject to the victim's consent, if they are committed by reason of the injured party's membership of one of the groups mentioned in Section 283(1) and if there has been a violation of human dignity.

Source: ECRI Report on Austria, 2010, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/austria/AUT-CbC-IV-2010-002-ENG.pdf>.

There have been major changes on the legislative front with the adoption of the Länder in 2005 and 2006 of the Equal Treatment Acts, which complement the federal acts that came into force in 2004, thus completing the process of transposing European Union Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and European Union Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation into Austrian law.

Victims can turn to judicial remedies as well as non-judicial, specialised bodies: the new federal legislation widens the mandate of the Commission for Equal Treatment and the Office of the Ombudspersons for Equal Treatment and establishes a separate body to deal with discrimination in employment in the federal public sector. At provincial level, each of the nine Länder has, in the areas within their competence, either widened the mandate of existing bodies or set up new ones.

The new federal legislation also makes it an administrative offence to publish discriminatory job advertisements.

3. Azerbaijan

3.1 Other information or observations in relation to the public discussion of both

"A number of journalists who criticized government officials in the course of their work were subjected to harassment, threats, and acts of physical violence that appeared to be connected to their criticism of the government or public officials. Reporters without Borders reported that independent and opposition journalists were under constant pressure because of their work..."

...In 2007 the Baku Court of Grave Crimes had sentenced the already jailed editor in chief of Realny Azerbaijan and Gundelik Azerbaijan to eight and one-half years in prison on charges of supporting terrorism, inciting ethnic hatred, and tax evasion. The charges were based on an article that Fatullayev wrote criticizing the government's policy towards Iran and listing specific locations in the country as potential targets for an Iranian attack. The sentence incorporated Fatullayev's previous libel conviction for an article he allegedly wrote purporting that government forces may have played a role in the 1992 events in Khojali. International and domestic observers considered his imprisonment politically motivated..."

Although opposition parties continued to publish newspapers, and human rights activists were mostly able to conduct their work without fear of reprisal, the government penalized persons who criticized government officials or practices in some cases."...

By Bureau of Democracy, *Human Rights, and Labor: 2009 Country Reports on Human Rights Practices*, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136020.htm>

"A variety of unregistered religious groups continued to function, including Muslim groups, Jehovah's Witnesses, and some evangelical Christians. However, some unregistered groups were subject to periodic and selective police harassment in the form of disruption of religious services and intimidation.".....During the reporting period, there were multiple reports of authorities detaining alleged Islamic radicals, shaving their beards, seizing weapons, and banning Islamic literature. Local commentators reported Salafists were particularly active in the northern regions of Zaqatala, Guba, and Kachmaz, but they criticized the Government for often failing to distinguish between extremists and observant Muslims."...

By Bureau of Democracy, Human Rights, and Labor: *International Religious Freedom Report 2009*, available at <http://www.state.gov/g/drl/rls/irf/2009/127299.htm>

"In June 2008 police in the northwestern village of Aliabad arrested Baptist pastor Hamid Shabanov for allegedly possessing an illegal weapon. Local Baptists claimed that local authorities planted the weapon in Shabanov's residence. In March 2008 Zaur Balaev, another pastor of the same Baptist community, was freed as part of a broader presidential pardon. Balaev had been sentenced in July 2007 to 2 years imprisonment for resisting local police who raided a meeting of the group in May 2007. Local Baptists disputed the Government's claim that Balaev resisted police, arguing that he was arrested because of his religious beliefs.

In June 2008 police disrupted two Jehovah's Witnesses services being conducted in private apartments in Baku suburbs. In both cases police detained several participants for several hours before releasing them without charges.

In January 2008 the Barda Region police detained a number of Jehovah's Witnesses for several hours and seized religious literature. According to the SCWRA, the group is registered to operate only in Baku... "

By Bureau of Democracy, Human Rights, and Labor: *International Religious Freedom Report 2009*, available at <http://www.state.gov/g/drl/rls/irf/2008/108435.htm>

4. Belgium

4.1. Legislation prohibiting incitement to national, racial and religious hatred

Ratification of Additional Protocol to Cybercrime convention is underway, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

The Criminal Code provides that hatred, contempt or hostility based, inter alia, on presumed race, skin colour, descent, national or ethnic origin, nationality, religious beliefs or language are aggravating circumstances in the case of a number of offences. The list of offences concerned includes murder, intentional wounding, harassment, defamation, arson and destruction or damage of movable property.

The Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia outlaws incitement to hatred, violence and racial discrimination, dissemination of ideas based on racial superiority or hatred and participation in racist associations.

The Act of 23 March 1995 prohibits denial of the genocide committed by the Nazi regime. The new legislation prohibits direct and indirect discrimination not only on the grounds of presumed race, skin colour, descent or national or ethnic origin but also on the grounds of nationality, religious belief and language, in many fields of life (including employment, access to public services and housing), in both the private and the public sector.

Under the Act of 10 May 2007 aimed at combating certain forms of discrimination, the list of offences, as provided in the Criminal Code, has been extended to include graffiti and damage to immovable property (Article 534quater of the Criminal Code).

Also of relevance are the Act of 10 May 2007 amending the Act of 30 July 1981 criminalising certain acts inspired by racism and xenophobia; and the Act of 10 May 2007 adapting the Judicial Code to the legislation aimed at combating discrimination and criminalising certain acts inspired by racism or xenophobia. These acts were accompanied by the Act of 10 May 2007 aimed at combating discrimination between women and men. They were all published in the Belgian Law Gazette (Moniteur belge) on 30 May 2007.

Source: ECRI Report on Belgium, 2009, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Belgium/BEL-CbC-IV-2009-018-ENG.pdf>.

4.2 Other information or observations in relation to the public discussion of both

In June 2006, the operators of the “Belgian Islamic Centre of Molenbeek” website were sentenced to a 10-month term of imprisonment, 5 months of which were suspended, and fined EUR 15,000 for clear incitement to hatred against the Israeli people and Jews in general. A steering group has been set up by the authorities to combat racism over the Internet. A circular is being prepared by the prosecution service on combating cybercrime in general. Despite the measures taken in recent years, all the governmental and nongovernmental observers agree that the situation is extremely worrying as regards racism on the Internet in Belgium and that recent years have seen a sharp increase in racist webpages and discussion forums that can be accessed from Belgian sites.

The problem concerns racist propaganda sites that disseminate hate speech against immigrants or persons of immigrant background, in particular Moroccans, Turks, black persons and Jews. Another recurring concern is electronic chain mail, and in particular e-mails containing messages denigrating Muslims. The problem, of course, is not confined to Belgian sites, so effective action in this area requires international co-operation as well. The Internet discussion forums are in some cases a source of racist and nationalist comments about the same groups as those listed above but also about French-speaking Belgians and/or Walloons on the one hand, and Flemings on the other hand. The discussion forums which cause problems tend to be those hosted on racist websites but also, in some cases, those

used by readers of the main French-language or Dutch-language Belgian newspapers to comment on articles that appear in these papers. The articles which attract these comments are themselves devoid of racist connotations. Yet even though these discussion forums are supposed to be moderated, numerous examples show that they regularly feature racist, in some cases virulently racist, rhetoric, accessible to all, without any action ever being taken against the authors or any effort made to remove the offending material from the forum.

With regard to articles published and reports broadcast in the media, ECRI notes from a recent university study on the French-language and Dutch language media that most of the media are making an effort to provide objective reporting on minority groups and the racism and discrimination that they encounter and that cases of racism are "extremely rare". The media are not immune, however, to the lure of sensationalism, publishing newspaper articles that promote racist stereotypes and prejudice. In 2008, for example, an article on Muslim children in Belgian schools appeared in a large-circulation Belgian newspaper under the heading: "How Islam is infecting schools" ("Comment l'Islam gangrène l'école"). On 13 November 2008, the AJP (Association of Professional Journalists) issued an opinion on this article in which it recommended "avoiding generalisations and unjustified over-simplifications, properly nuancing articles covering persons of immigrant background, and avoiding polarisation or "us and them" perspectives". It also stated: "Journalists are requested to ensure that they follow stories to the greatest extent possible, up to their final form, and including as regards the choice of headlines, illustrations and images." The 1994 Recommendations made by the General Association of Professional Journalists regarding information on persons of immigrant background are being revised in collaboration with the Centre. Other moves to combat racism in the media have been made in the form of seminars and training for journalists. A number of initiatives are aimed at creating more diversity among media professionals.

There are Neo-Nazi and extreme rightwing groupings active in Belgium. They regularly organise public meetings and concerts in which Nazi chants are sung. The organisation Blood and Honour also regularly organises events such as the commemoration of Hitler's birthday. Admittedly, these gatherings are attended by no more than a few hundred people at a time, and often considerably fewer. These organisations and their racist and anti-semitic activities have been condemned by Belgian human rights and anti-racist NGOs, according to who to date the authorities have not paid sufficient attention to the organisation of concerts and other similar events. For example, an open letter signed by well-known Flemish figures was sent in October 2008 to the Federal Ministers of Justice and the Interior calling on the authorities to put an end to the activities of the Neo-Nazi organisation Blood and Honour.

However, the police has a follow-up mechanism for this type of organisation through a Protocol agreement between the different police forces involved. The Belgian authorities have sometimes taken action, for example closing down two Internet sites which were selling Nazi propaganda material. Some members of a branch of Blood and Honour, (BBET- Bloed Bodem Eer Trouw) have nonetheless been the subject of proceedings which are now pending before investigating judges. These individuals, some of whom belonged to the military, are suspected of terrorist activities, as well as of disseminating via the internet racist statements and statements denying the Holocaust. The fact remains that it is difficult for the police to follow up on extremist activities which take place within the framework of private meetings and that it is not possible to preventively prohibit such private meetings held by extremist movements.

Three Bills have been introduced with the aim of strengthening the legal arsenal for fighting against the activism of Neo-Nazi groups within Belgian territory. There also exist extreme right-wing movements whose primary, ultra-nationalist message is a call for a "homogenous Flanders", and whose extremist discourse is directed towards all non-Flemish people, particularly the French-speaking Belgians living in Flanders, especially on the borders with Brussels-Capital and Wallonia. Small groups regularly organise demonstrations attracting media attention in the municipalities with a high proportion of French-speaking residents, violently criticising the French speaking municipal councillors and publicly hurling racist insults at them in full view of the media. This remains a marginal phenomenon. However, in view of the media coverage and the context of the current political crisis between French-speakers

and Dutch-speakers, it is of serious concern to ECRI which believes it essential for action to be taken as swiftly as possible against all “nationalist” discourse which equates in reality to hate speech against individuals on account of their ethnic origin or language.

Even though acts of racist violence remain rare in Belgium, since the last ECRI report there have been a number of racist attacks, one of which has proved fatal; this illustrates the fact that the problem of racist violence must be closely monitored. The attacks recorded were directed primarily against Blacks, immigrants or Belgians of immigrant background, asylum seekers and Jews. The Centre for Equal Opportunities and the Fight against Racism (the Centre) regularly highlights the link between racist violence in Belgium and the circles in which the perpetrators of these acts move. A large number of perpetrators of racist violence belong to extreme right-wing or other extremist movements and have been immersed in racist hate-speech. This has clearly played a role in prompting them to engage in such conduct. The most striking example of this phenomenon is undoubtedly the Van Themsche case. In October 2007, Hans Van Themsche, 19 years old, was sentenced to life imprisonment by the Antwerp Assize Court for shooting dead a 2-year old child and her Malian nanny and for the attempted murder of a Turkish woman in the streets of Antwerp in 2006, with the stated aim of “killing as many foreigners as possible”. The Court held racism to be an aggravating circumstance and the trial showed that the perpetrator had grown up in an extreme right-wing environment, which had fed his hatred of foreigners and prompted him to act as he did. This holds true for many other cases brought recently before the Belgian courts: with regard to the racist physical attack on two young women of North African origin in Liège in 2008, one of the persons responsible was well-known for his Neo-Nazi activities and links with extreme right-wing political groups. In another case concerning the beating up of non-citizens in Bruges in 2007, the perpetrators were identified as belonging to the skinhead movement.

The authorities are attempting to respond to these acts of violence in a variety of ways. The police and the courts are becoming increasingly aware of the need to take account of racist motives when dealing with cases. However, in view of the seriousness of the incidents recorded in recent years, the authorities’ response to racist violence needs to be improved and such violence needs to be prevented, in particular by addressing the problem of racist organisations, whether or not they are political, and racism in public discourse in general and on the Internet in particular. Moreover, the cases brought before the courts would appear to represent only the tip of the iceberg insofar as NGOs claim that the people who contact them in connection with racist attacks often prefer not to report these incidents to the police.

ECRI notes the persistence of intolerant acts and expressions directed against persons belonging to the Jewish community. In relation to anti-semitic acts, in its 2007 report “Discrimination-Diversity”, the Centre noted that the number of complaints of anti-semitism had remained relatively stable over the previous four years, although there had been an increase in complaints of anti-semitism on the Internet. The anti-semitic expressions reported included death threats and revisionist viewpoints. Other instances of anti-semitism noted in recent years concerned verbal and physical attacks on Jews, including on children, especially in Brussels and Antwerp. There were also instances of vandalism of synagogues or private property belonging to Jews. Those responsible for these acts are often connected with extreme right-wing movements or with Muslim fundamentalists. Data on anti-semitic acts is collected in close collaboration between the Centre and a group of volunteers who have set up a website (www.antisemitisme.be) on which such acts are reported. The Belgian authorities are aware of the problem of anti-semitism and have taken measures to try and eradicate it, notably the establishment of a racism watchdog body, comprising not only the Centre but also representatives of public authorities as well as associations representing the Jewish communities in Belgium. All the steps taken are aimed at combating not only anti-semitism but racism in general.

The “cordon sanitaire” introduced by the main Belgian parties, under which they refuse to negotiate with the extreme right-wing parties so as to prevent them from ever coming to power, has probably helped to weaken these parties, with the 2007 general election seeing a levelling off or even decline in support compared with the regional elections in 2004. It can also be observed that the extreme right-wing parties have not really played a key role in the political crisis that has been going on since the general election on 10 June 2007, even

though one of the main themes of Vlaams Belang is Flemish independence. Caution is needed, however, as the extreme right-wing parties are continuing to spread their racist, anti-semitic and xenophobic propaganda. A number of leaders and militants from extremist parties have also been making racist statements in public against the other linguistic community in the name of extreme nationalism. Such exploitation of the climate of political tension that exists between the French-speaking and Dutch-speaking communities is particularly deplorable as it encourages certain sections of society on both sides to succumb to inter-community prejudice and stereotypes. It is important to emphasise, however, that the great majority of French-speaking and Dutch speaking Belgians refuse to fall into this trap.

Source: ECRI Report on Belgium, 2009, available at:
<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Belgium/BEL-CbC-IV-2009-018-ENG.pdf>

5. Bulgaria

5.1 Legislation prohibiting incitement to national, racial and religious hatred

The Convention on Cybercrime was ratified and Bulgaria has indicated that it has no problem ratifying its additional protocol, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. There is no statutory provision making racist motivation for an offence an aggravating circumstance. They have indicated, however, that although the Criminal Code does not expressly provide for the racist motivation of a crime to be taken into consideration, the General Part provides that at sentencing, the court shall take into consideration, inter alia, the motives for the commission of the act. They also stated that very few prosecutions were brought under the Criminal Code. The relevant provisions are Article 162 (prohibiting racial hatred), Article 163 (prohibiting racist violence), Article 164 (prohibiting incitement to religious hatred) and Article 165 (prohibiting attacks on religious grounds).

Source: ECRI Report on Bulgaria, 2009, available at:
<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bulgaria/BGR-CbC-IV-2009-002-ENG.pdf>

5.2 Other information or observations in relation to public discussion of both

Roma are not represented in the media and there is little reflection of their views. NGOs consider that the media contribute to creating a climate of intolerance and prejudice against Roma. On the political front, an extreme right-wing political group makes speeches against Roma, among others, on its private television channel, and rarely incurs penalties. An extreme right-wing party has been launching virulent verbal attacks on, among others, Turks as an ethnic and religious group, and that it has helped to create a climate of intolerance towards them. For instance, the party often presents Turks as a threat to the country. In March 2008 the party's leader was convicted by the Sofia Court on the grounds that he had created a hostile and threatening environment for Turks. The court ordered this party to refrain from making remarks of this kind. According to certain polls, the party's popularity is waning. It would appear that in 2006 the Bulgarian Parliament adopted a declaration condemning the growing threats to religious tolerance and ethnic peace. It does not, however, seem that the authorities have taken any firmer stance in preventing the party concerned from verbally attacking Turks, among others, or in applying the provisions of the Criminal Code concerning incitement to racial or religious hatred to it. There are reports of attacks on mosques (graffiti on the walls, broken windows) in certain towns, and those responsible are seldom prosecuted.

There are reports of hostility towards Macedonians in the media and few measures have been taken to respond to complaints by Macedonians in this respect or to bring the media to account. The Radio and Television Act contains provisions prohibiting programmes that incite ethnic, racial, national or religious intolerance. The Act also provides that national radio and television must produce programmes for people whose mother tongue is not Bulgarian. The Electronic Media Council is, among other things, responsible for monitoring the application of

the Act and inflicting penalties if it is not observed. In 2004, media professionals adopted a code of ethics, which provides, inter alia, that the race, colour, religion and ethnic origin of an individual must not be mentioned unless this is relevant. In addition, a National Council of Ethics has been set up by associations of journalists to establish a self-regulatory framework for implementing the code. This was done later in the wake of the establishment, in 2006, of two bodies responsible for receiving complaints about radio and television programmes.

Furthermore, since 2004, an annual national competition has been organised for journalistic excellence in respect of ethnic and religious tolerance. However there is information from representatives of ethnic and religious minorities concerning manifestations of intolerance and incitement to racial, ethnic or religious hatred in the press and on television. Some ethnic minority representatives stated that they had complained to the Electronic Media Council, but that no steps had been taken to punish those responsible in accordance with the law. The Electronic Media Council has confirmed that it had received few complaints in this connection between 2005 and 2007. It said that about 10 to 15% of the complaints received were lodged on religious or ethnic grounds, and that it inflicted few penalties in response to complaints generally.

There are reports of racist attacks, in particular on visible minorities, such as Roma and Black people, but that when complaints are filed little action is taken. These attacks are sometimes perpetrated by groups of skinheads and take place, for instance, in public places or on the occasion of football matches. In this regard, in November 2007 the Bulgarian Football Association held a national conference to express its firm opposition to this phenomenon. An extreme right-wing party is disseminating on its private television channel, anti-semitic messages and that, although this has been reported to the Electronic Media Council, no action seems to have been taken against the party. Instances of anti-semitism on the Internet, whether on isolated occasions on forums in response to specific events such as the announcement of a request for the return of property, or more repeatedly, have been observed. Although some steps have been taken, particularly in order to close down a website containing, among other things, the names and contact details of Jewish people in Bulgaria, it would seem that a policy to combat this phenomenon has yet to be drawn up. The legislation is not applied to people who publish anti-semitic books.

Source: ECRI Report on Bulgaria, 2009, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bulgaria/BGR-CbC-IV-2009-002-ENG.pdf>

6. Czech Republic

6.1 Legislation prohibiting incitement to national, racial and religious hatred

Neither ratification nor signature has taken place of the Additional Protocol to Cybercrime convention, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. In 2008 the Czech Parliament enacted a new Criminal Code, which will come into force on 1 January 2010. Under section 42(b) of the new Criminal Code, racist motivations remain a specific aggravating circumstance that judges are required to take into account when sentencing offenders. The authorities have indicated that additional aggravating circumstances have been added for a number of offences, where the commission of an offence is motivated by the real or perceived race, ethnic affiliation, nationality, political persuasion, religion or real or perceived lack of religious belief. The offences for which these aggravating circumstances may be taken into account are: murder, grievous bodily harm, bodily harm, torture and other inhuman and cruel treatment, false imprisonment, unlawful restraint, kidnapping, blackmail, breach of secrecy of documents held in private, damage to private property, abuse of the authority of an official, violence against a group of persons and against an individual, defamation of a nation, race, ethnic or other group of persons, and some military offences.

Section 352 of the new Criminal Code prohibits violence against a group of inhabitants and individuals; section 355 prohibits the defamation of a "nation, race, ethnic or other group of persons", including on grounds of an individual or group's "real or perceived race,

membership of an ethnic group, nationality or political or religious convictions or lack thereof”; in this case, racist motivations can only be considered as an aggravating circumstance where the offence was committed via the press, film, radio, television, a publicly accessible computer network or other similarly effective means. Section 356 prohibits incitement to racial, national, ethnic, class or religious hatred and the promotion of restrictions on human rights and freedoms. Under section 403, it is prohibited to establish, support, promote or publicise a movement aiming to suppress rights and freedoms of human beings; to bring this offence into line with other crimes, the commission of this offence via a publicly accessible computer network has been added as an aggravating circumstance. Section 404 prohibits manifestations of sympathy with such a movement. Under section 400, the acts that may constitute the crime of genocide have been extended to include the commission of this crime against “a class or other similar group of people”, and the maximum penalty has been increased to a sentence of imprisonment for twenty years. Section 401 sets out a new criminal offence of an attack on humanity, covering the crimes usually recognised as crimes against humanity, as well as enforced disappearance of persons, and uniform penalties have been defined for such offences. New definitions of the crimes of apartheid and discrimination against a group of people have also been introduced under section 402. Section 405 makes it a criminal offence to deny, cast doubt on, approve or justify genocide, and this offence has been extended to cover genocides other than those committed by the Nazi or Communist regimes.

Source: ECRI Report on the Czech Republic, 2009, available at:
http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/czech_republic/CZE-CbC-IV-2009-030-ENG.pdf

6.2 Other information or observations in relation to the public discussion of both

According to official data on extremism and extremist crimes (defined essentially as crimes “reasonably judged to have been motivated or influenced by extremist attitudes”, or “crimes motivated by racial, national or other social hate”), the number of such crimes has declined steadily in recent years. The number of extremist crimes recorded in 2007 was thus less than half that recorded in 2002. The most commonly reported offences are offences related to the support for or propagation of movements suppressing human rights and freedoms, and insulting a nation, ethnic group, ‘race’ or religious conviction. Approximately 18% of racist crimes reported in 2007 involved violence.

Despite the measures so far taken to combat racist crimes, NGOs remain concerned that the criminal justice system does not always provide sufficient protection against racially motivated offences, indicating that crimes committed against members of the Roma community in particular may remain unreported due to victims’ fear of, or lack of trust in, the police. Concern has also been expressed that the approach taken by both the police and the judiciary to establishing whether an act was based on racist motivations is frequently too narrow, meaning that an excessively high standard of proof is required to establish the existence of a racist motivation.

Racism in political discourses:

Anti-Roma hate speech has become an increasingly regular feature of public discourse in the Czech Republic. In recent years, high-ranking politicians, including government ministers and elected local officials, as well as candidates for office, have made widely publicised anti-Roma statements. Anti-Roma slogans have been used as part of election campaigns, especially at local level, and inflammatory statements against the Roma appear at times to have been rewarded by appointments to higher office. At the same time, and in contrast with numerous reactions publicly condemning aggressive street demonstrations by some groups, the propagation and reinforcement of negative stereotypes about the Roma by political leaders from mainstream parties has rarely attracted strong criticism. In some cases, mainstream party officials elected at local level have suggested – apparently without reprobation from their own parties – that it is the Roma themselves who are entirely responsible for the attitudes towards them of partisans of extreme right-wing groups. In April 2008, a Senate committee

moreover refused to waive the parliamentary privilege of a Senator in order to allow her prosecution on charges of hate speech.

Extreme right-wing parties are also a cause for concern. ECRI finds particularly worrying the publication by the National Party in August 2008 of a study entitled "The Final Solution to the Gypsy Question in the Czech Lands", which proposes relocating the Roma to India. While some observers have dismissed this proposal as a ploy to provoke the public and attract media attention, others have underlined its parallels with Nazi Germany. This same party published sweeping verbal attacks on all Muslims on its website following the death of the Czech ambassador to Pakistan in a terrorist bombing in late 2008; legal proceedings against the party were however dismissed by the relevant court, which found that the statements were not against the law. Overall, however, it is Roma who are the most frequent targets of racist discourse by politicians as well as the general public. Roma representatives have pointed to a growing climate of fear within their community; they stress that the absence of decisive action by the authorities against the National Party creates the feeling that racism directed against the Roma community does not matter.

Racist discourse appears to be becoming an increasingly everyday fixture in the Czech political arena. Political leaders on all sides should take a firm and public stance against the expression of racist and xenophobic attitudes, including when these expressions come from within their own ranks. It strongly recommends that the Czech authorities step up their efforts to combat racism and intolerance in political circles, not only in the capital, but also in smaller cities and local communities.

Neo-Nazi groups and other extreme right-wing movements Neo-Nazi and other extreme right-wing groups continue to be active in the Czech Republic. As described in the annual reports of the Ministry of the Interior assessing extremism in the Czech Republic, such groups continue to organise typical events such as concerts; at the same time, they appear to be developing both increasingly sophisticated strategies to avoid prosecution and a growing interest in organising or participating in public events of a political nature. In recent years, there has moreover been a disturbing intensification in the activities of the extreme right-wing milieu in the Czech Republic. In late 2007, the National Party set up a uniformed paramilitary organisation known as the National Guard. The group drew attention to itself by organising patrols outside a school in mid-2008, ostensibly to protect local schoolchildren from attacks by Roma children. It was reportedly also suspected of attacking the Gay Pride march in Brno in June 2008.

The establishment of this group drew public criticism from high-ranking politicians in mainstream parties, and that the Ministry of the Interior refused the group's application for registration in July 2008. The authorities have also indicated that they are monitoring the group's activities closely, in particular as regards their compliance with the law. However, to date neither the creation of this paramilitary group nor the views expressed by the political party of which it is an off-shoot have been seen as sufficient grounds for action by the authorities towards dissolving the party.

More generally, extreme right-wing groups have become increasingly vocal and active in the Czech Republic over recent months. Marches have been organised by several such groups, including the Workers' Party and well known neo-Nazi groups such as the National Resistance and the Autonomous Nationalists (sometimes together), in different towns, with increasing frequency and publicity. ECRI is deeply concerned at the aggressive anti-Roma stance expressed by the Workers' Party, which is one of the largest marginal political parties (not represented in any elected bodies) in the Czech Republic and which is reported to be supported in its views and activities by neo-Nazi groups such as those mentioned above. This party has also organised patrol groups to "monitor" the situation between the majority and the so-called "unadaptable" minority (a derogatory term understood to designate the Roma). The views of the party have been expressed not only through declarations of leading members and pamphlets distributed by the party, but also through actions that appear deliberately designed to intimidate the Roma community. Such actions have led to violent clashes between extreme right-wing demonstrators and police.

Extreme right-wing and neo-Nazi groups active in the Czech Republic continue to use simplistic messages to gain support for their views, in particular stigmatising specific groups and asserting that these groups are largely or solely responsible for crime or for economic and social difficulties experienced in Czech society. Such blatantly racist messages must always be countered, but that it is all the more urgent to do so in times of economic strife, when such messages may resonate more readily beyond the existing supporters of extreme right-wing groups. The value of taking a broad approach to combating racist discourse is not focusing exclusively on criticising the views and activities of right-wing extremists themselves but also addressing other factors that create favourable conditions for such discourse to take root. These include the incidence of racial discrimination in everyday life; economic hardship, and perceptions of the causes of such hardship; as well as long-standing prejudices against the Roma and perceptions about their place within Czech society.

The Czech authorities have stated that, in accordance with the Broadcasting Act and the Czech Television Act, the broadcast media are subject to a duty to strike the right balance, and in particular not to provoke intolerance. Civil society actors report that, while some journalists are sympathetic to minority issues and willing to cover positive stories, feedback on such stories is generally negative. The tabloid press is moreover reported frequently to typecast members of the Roma minority as people, who by definition steal, fail to pay rent, are violent or refuse to work. Online discussions on the websites of magazines or newspapers are also overwhelmingly negative. The ethnic origin of criminal suspects, in cases where the suspect belongs to a minority, is often mentioned in news reports, and little progress appears to have been made towards the adoption of a code of ethics that is adhered to by the media. Racist and xenophobic discourse is also common on the Internet. This applies not only to the websites of extreme right-wing parties but also to other less well known groups peddling negative messages about foreigners.

In July 2008, the deputy chair of the Government Council for Roma Community Affairs brought proceedings against an extreme right-wing party for defamation of a nation, race and convictions, after it published texts threatening the fundamental rights and freedoms of Czech residents having another nationality. This followed two judicial decisions earlier in the year concerning other neo-Nazi websites, one upholding a three-year suspended sentence for a supporter of a skinhead convicted of launching and running neo-Nazi web pages, and another sentencing two men to prison for two and three years respectively, for running a neo-Nazi webzine. Both men in the latter case were found guilty of supporting and promoting movements aiming to suppress human rights and freedoms. A discussion in the Czech language is currently running on neo-Nazi pages of Facebook, a site based in the United States, on the so-called "final solution to the Gypsy question". ECRI welcomes the active steps taken by the authorities to put an end to the dissemination of racist and xenophobic ideas through the internet. It again draws the authorities' attention to the concerns of the Roma community, which has expressed growing fear as to the safety of its members, and the need to know that their safety is protected by the state, in a climate where racism is becoming an increasingly common currency in public discourse.

Racist Violence: According to the Ministry of the Interior, victims of the most serious, violent racist crimes are reported to be predominantly Roma. One murder in 2007 was treated as having racist motivations; a total of 46 crimes of racist violence were reported, according to official figures, in 2006, and 22 in 2007. Anecdotal evidence from non-governmental organisations working with minority groups, especially the Roma, suggests, however, that the number of incidents of racist violence may be significantly higher than the number of such crimes recorded in official figures. Victims may refrain from reporting a crime because they lack confidence in the police; in other cases, they report that no action at all is taken by the police to follow up on complaints lodged about racist violence, or that action is taken but that the racist aspects of the case are ignored. Thus, when the Brno mosque was vandalised in October 2008, the words "Stop Islam" having been sprayed on its walls and "No" on its door, the police were reported to be investigating the incident, but to consider that an extremist motive had not been clearly proved.

In addition to violent attacks on individuals or property, repeated demonstrations by extreme right-wing groups have led to escalating tensions and, at times, violent acts. From October to

December 2008, a series of rallies and marches directly targeting the predominantly Roma-inhabited Janov housing estate in Litvinov were organised by extreme right-wing organisations. The express aim of these demonstrations was to march on this estate, and they were attended by several hundred persons, including members of notorious neo-Nazi groups. One rally also aimed specifically to denounce “positive discrimination”. The marches led to violent clashes with police, whose physical intervention was required to prevent demonstrators from reaching the Janov neighbourhood. A further march through Janov by around thirty members of Workers’ Party “patrols” was held in January 2009. These activities have considerably increased tensions in the area. Some non-Roma residents have expressed open support for the extreme right-wing demonstrators, and the latter’s activities have stirred up fear amongst members of the Roma community. Concerns have also been expressed that the charges laid against individuals arrested in connection with these rallies related only to breaches of the peace and rioting, and did not reflect the racist motivations behind the events.

The Prime Minister, the Minister of the Interior and the Minister for Human Rights and Ethnic Minorities have publicly condemned extremist manifestations, indicating that neo-Nazi bodies in particular were being closely monitored and that resolute action would be taken if needed. In addition, some local authorities have banned planned extreme right-wing rallies, and one, Ústí nad Labem, announced on 3 March 2009 its intention to support the activities of an antiextremist group, and the same week banned two marches planned by a neo-Nazi group in different parts of the town in April. In November 2008, the government announced that it would bring proceedings before the Supreme Administrative Court to ban the Workers’ Party. On 4 March 2009, however, the Court dismissed the case, on the grounds that the government had not provided sufficient evidence of the party’s involvement in organising the events complained of.

Source: ECRI Report on the Czech Republic, 2009, available at:

http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/czech_republic/CZE-CbC-IV-2009-030-ENG.pdf

7. Denmark

1.1 Legislation prohibiting incitement to national, racial and religious hatred

Denmark ratified in June 2005 the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Denmark has incorporated the European Convention on Human Rights into Danish law but it has not yet incorporated the International Convention on the Elimination of All Forms of Racial Discrimination. Article 81 of the Criminal Code provides that the racial and ethnic motivation of a crime will be deemed to be an aggravating circumstance. However, as this provision is relatively new, there is as yet no case law on it.

Source: ECRI Report on Denmark, 2006, available at

http://hudoc.ecri.coe.int/XML/ENGLISH/Cycle_03/03_CbC_eng/DNK-CbC-III-2006-18-ENG.pdf

1.2 Legislation protecting freedom of speech

Holocaust denial and revisionism are not a crime in Denmark. 90% of Nazi material and memorabilia as well as Holocaust denial material are published and manufactured in Denmark and sold in the rest of Europe, mainly in Russia. As freedom of speech prevails in Denmark, anti-semitic statements are not monitored.

Source: ECRI Report on Denmark, 2006, available at

http://hudoc.ecri.coe.int/XML/ENGLISH/Cycle_03/03_CbC_eng/DNK-CbC-III-2006-18-ENG.pdf

8. Estonia

8.1 Legislation prohibiting incitement to national, racial and religious hatred

Hate speech is currently only punishable where substantial damage has been caused to the victim's rights, as Article 151 1) of the Criminal Code provides that activities which publicly incite hatred, violence or discrimination on the basis of, among others, nationality, race, colour, language, origin or religion, if they result in danger to the life, health or property of a person, are punishable by a fine of up to 300 fine units (approximately 1,150 EUR) or by detention. Article 151 2) of the Criminal Code further provides for pecuniary punishment or up to 3 years' imprisonment if the act causes the death of a person or results in damage to their health or other serious consequences, or it is committed by a person who has previously been punished for such an act. The Criminal Code does not, in fact, punish hate speech independently of specific consequences.

Source: ECRI Report on Estonia, 2010, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Estonia/EST-CbC-IV-2010-003-ENG.pdf>

9. France

9.1 Legislation prohibiting incitement to national, racial and religious hatred

L'arsenal législatif en la matière -qui remonte concrètement à une première loi relative à la lutte contre le racisme de 1972 si l'on fait abstraction des références constitutionnelles et de la CEDH- est riche car de nombreuses dispositions législatives ont été votées ces dernières années pour renforcer la lutte contre la discrimination raciale (ou religieuse). Elle ont été insérées dans différents types de textes (pas seulement dans le code pénal et le code civil), d'où un aspect hétérogène qui complique sa lisibilité.

On citera cependant notamment la loi du 16 novembre 2001 relative à la lutte contre (toutes) les discriminations et la loi du 17 janvier 2002 dite de « modernisation sociale » ainsi que les articles 225-1 à 4 du nouveau **code pénal** (*entré en vigueur le 1^{er} mars 1994 et qui a beaucoup étoffé les mesures de lutte contre le racisme et durcit les sanctions*) sur les discriminations en matière de refus d'un bien ou d'un service, d'entrave à l'exercice normal d'une activité économique, de refus d'embauche, de sanction ou de licenciement, de fourniture conditionnée d'un bien ou d'un service, d'offre d'emploi, énonçant des peines de 3 ans d'emprisonnement et/ou 30 000 euros d'amende (assorties de peines complémentaires comme l'inéligibilité), lesquelles sont portées à 5 ans d'emprisonnement et 75 000 euros d'amende lorsque le refus discriminatoire est commis dans un lieu accueillant du public ou aux fins d'en interdire l'accès.

L'article 225-18 quant à lui punit d'une peine de 3 ans d'emprisonnement et à 45 000 euros d'amende les violations de sépulture à caractère raciste ou anti-religieux (la peine est durcie - 5 ans et 75 000 euros- en cas d'atteinte à l'intégrité du cadavre).

La diffamation et l'injure raciale non publiques figurent respectivement aux articles R.624-3 et 624-4 du code pénal.

Le mobile raciste, xénophobe ou antisémite de l'auteur a été érigé en circonstance aggravante de certains crimes et délits depuis une loi du 3 février 2003 (article 132-76 du code pénal), ce qui peut avoir notamment pour effet de modifier la nature de l'infraction, la faisant passer du délit au crime.

La loi du 9 mars 2004 -portant adaptation de la justice aux évolutions de la criminalité- a élargi aux menaces, vols et extorsions la liste des infractions pour lesquelles la circonstance aggravante à caractère raciste ou antisémite peut être retenue et elle a renforcé la répression contre les crimes et délits de nature raciste et les discriminations, commis notamment par des personnes dépositaires de l'autorité publique.

Par ailleurs, la prescription des délits à caractère raciste ou antisémite en matière de presse a été allongée afin de faciliter l'exercice des poursuites.

La loi du 27 mai 2008 « portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations » a eu pour but de réaliser la transposition complète des directives européennes relative à l'égalité de traitement.

On relèvera la consécration législative (dans l'article 225-1 du code pénal) des tests de discriminations (dits « testing ») après avoir été admis par la jurisprudence de la chambre criminelle de la Cour de cassation comme moyen de preuve en matière de discrimination raciale.

En matière d'emploi et de logement, il faut souligner la loi du 25 mars 2008 sur l'égalité des chances et celle sur le « logement opposable » du 5 mars 2007.

Il est intéressant également de noter une disposition particulière en matière de mémorisation des données informatisées qui figure que dans la loi N° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés: l'article 31 interdit de mettre ou conserver en mémoire informatisée, sauf accord exprès de l'intéressé, des données nominatives faisant apparaître les origines raciales ou les opinions religieuses des personnes.

En droit administratif, nous relèverons que s'agissant des modalités d'application du principe d'égalité aux étrangers en droit public, il est prévu à l'article R.779-9 du code de la justice administrative que « *les associations régulièrement déclarées depuis au moins cinq ans et se proposant, par leurs statuts, de lutter contre les discriminations, peuvent exercer les actions en justice qui naissent de la loi du 27 mai 2008 susmentionnée en faveur des victimes d'une discrimination* » et qu'il existe également des mesures administratives permettant de dissoudre certains groupements et interdire -ou refouler à la frontière- des publications inspirées par des idéologies racistes ou antisémites.

Au plan international, il faut souligner que la France n'a pas ratifié la *Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille* de 1990 dont certaines dispositions ont un effet direct sur la question de la discrimination raciale, non plus que la convention 169 de l'Organisation internationale du travail relative aux peuples indigènes et tribaux (qui concerne les territoires d'outre-mer).

In addition, we refer to the the 2010 ECRI Report on France, which states the following:
On 10 January 2006, France ratified the Convention on the Cybercrime and the Additional Protocol thereto concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. The High Authority against Discrimination and for Equality was established in 2005. France has considerable legal resources with which to combat racist statements and acts. For example the Law on Freedom of the Press of 29 June 1881 criminalises inter alia the following acts committed in public: defamation, insults and incitement to discrimination, hatred or violence on grounds of origin or of belonging, or not-belonging, to a given ethnic group, nation, race or religion. This law applies to internet content. A racist motive can be taken into account as an aggravating circumstance in respect of a whole series of offences against persons or property. Article 225-1 of the Criminal Code prohibits discrimination on grounds, inter alia, of race and religion. It is generally acknowledged that the criminal law provisions to combat racial discrimination have so far been little implemented for a number of reasons. There is a whole legal apparatus to combat Internet content inciting racial hatred.

Source: ECRI Report on France, 2010, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-IV-2010-016-ENG.pdf>

9.2 Legislation protecting freedom of speech

La liberté d'expression figure à l'article 11 de la Déclaration des droits de l'homme et du citoyen de 1789, incluse dans le préambule de la Constitution.

Il n'assortit l'exercice de cette liberté que des limites fondées sur les nécessités de l'ordre public ou les abus de ladite liberté qui sont définis explicitement par la législation (diffamation et injure (article 29 de la loi de 1881 mentionnée ci-dessous), atteinte à la vie privée (article 9 du code civil), atteinte à la présomption d'innocence, (article 9-1 du même code), protection des victimes d'infraction et des mineurs, incitation à commettre un certain nombre d'infractions (comme la provocation à la discrimination, à la haine ou à la violence (article 24-6 de la loi de 1881 ci-dessous), diffamation à base raciale, religieuse ou nationale (article 32 de la même loi) contestation de l'existence des crimes contre l'humanité, protection de l'autorité judiciaire et de la défense nationale.

L'une des composantes fondamentales de la liberté d'expression, à savoir la liberté de la presse, est protégée depuis une loi du 29 juillet 1881.

On notera que l'apologie des crimes contre l'humanité a été insérée dans ladite loi (article 24.al. 3) par la loi n°87-1157 du 31 décembre 1987 et que la contestation (révisionnisme ou négationnisme) des crimes contre l'humanité figure à l'article 24 bis de la loi de 1881 et résulte de la loi du 13 juillet 1990. La peine encourue pour les deux crimes est de cinq ans d'emprisonnement et 45 000 euros d'amende.

Depuis 1881, les dispositions relatives à la liberté d'expression ont été insérées également dans d'autres textes sans que les tentatives de remise en forme sous forme de codification n'aient pu aboutir, d'où le caractère hétérogène du droit français relative à cette liberté. De plus, pour des raisons techniques, les nouveaux modes de communication (comme la publicité) ont fait l'objet à leur apparition de réglementations particulières qui subsistent.

9.3 Other information or observations in relation to the public discussion of both

According to the ECRI Report, racist violence however does not appear to be a particularly serious problem in France, although there have been cases of physical attacks against persons on the grounds of their ethnic origin, notably against persons belonging to visible minorities, such as Muslims, Jews and Roma. A number of racially-motivated attacks have occurred against places of worship such as mosques and synagogues and some cemeteries have been desecrated on racist grounds. Some perpetrators of racist violence belong to extreme right-wing movements, which others, such as certain fundamentalist Muslims, seem to be motivated by a form of identity-based radicalisation and withdrawal. Violence seems to have been gaining ground, according to CNCDH, since perpetrators no longer settle for threats and insults.

Extreme-right parties remain in the political landscape. However, leading political figures at all levels generally take a firm stance against many forms of racism, including islamophobia and anti-semitism. In at least one case, a party member who made racist remarks was excluded from the party leadership. In another case, the leader of a political party was penalised by the courts for racist statements. However, a number of remarks by politicians, in particular on immigration and integration, have been perceived as encouragements to expressions of racism and xenophobia.

Certain French media sometimes convey racist prejudices and stereotypes such as recent TV programme entitled "Delinquency: the Roma way", sanctioned by the CSA and the justice system for inciting racial discrimination. The situation in France concerning racism on the internet is a serious cause for concern. There has reportedly been a significant increase in the web pages and discussion boards with racist content accessible from French internet sites. France has a whole legal apparatus to combat internet content inciting racial hatred. Sites against the law can be reported to the Prosecution service. There is also a government site for reporting unlawful internet content. Following the entry into force of the 2004 law on confidence in the digital economy, on 19 June 2008 the Court of Cassation dismissed an appeal on points of law against a decision requiring internet service providers to block access from French territory to a site hosted abroad which was offering to supply brochures with anti-semitic and Holocaust-denial content.

In recent years a number of incidents of verbal violence of a racist (above all against Black or North African players) or anti-semitic nature have been noted at French football grounds. In 2009 for the first time a player for an amateur club was brought to court for having made racist remarks about another player during a football match. Sports authorities have also imposed disciplinary penalties on football clubs for certain fans' racist behaviour at matches.

There are some active Neo Nazi and extreme right-wing groups active in France. There was an increase in 2008 of the proportion of incidents involving racist violence or threats attributable to extreme right-wing groups. A small group was dissolved by presidential decree in 2006, on the basis of a 1936 law on combat groups and private militias, on the ground that it had spread ideas and theories aimed at justifying and encouraging racial discrimination, hatred and violence and that it advocated anti-semitism. Verbal or physical attacks against Muslims and mosques continue to take place. The reaction of the highest-level authorities is to take a firm, public stance condemning this type of act. A number of courts have taken decisions penalising islamophobic statements or acts. According to the organisations monitoring islamophobia, the number of intolerant acts reported against Muslims falls far short of reality. The Ministry of the Interior has demonstrated its will to work more closely with Muslim institutions (notably the French Council for Muslim Worship) and North African associations so as to better tackle the racism affecting these groups. There is information from a number of sources that travellers continue to be confronted with generally hostile attitudes in France and with racist prejudice on the part of members of the majority population. Anti-semitic acts continue to take place and there has been a significant increase in anti-semitic content on the internet. However, a number of sources draw attention to the active role played by the authorities in combating anti-semitism in a number of fields. In general, anti-semitic acts are strongly condemned by leading political figures. The police, prosecution service and the courts generally take account of anti-semitic motives where applicable. The mobilisation of law enforcement agencies to prevent anti-semitic violence has also been identified as a factor that has reduced the number of acts of violence. Racial profiling is a serious problem in identity checks.

Source: ECRI Report on France, 2010, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-IV-2010-016-ENG.pdf>

10. Germany

10.1 Legislation prohibiting incitement to national, racial and religious hatred

Germany has 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.

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.

Source: ECRI Report on Germany, 2009, available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/germany/deu-cbc-iv-2009-019-eng.pdf>

11. Greece

11.1 Legislation prohibiting incitement to national, racial and religious hatred

Legislation is in place (L. 927/1979 with various subsequent amendments) but there is no effective implementation.

11.2 Other information or observations in relation to the public discussion of both

As there are currently no official data on racially-motivated crimes in Greece, it is difficult to make a broad and in-depth assessment of the situation. Since the publication of ECRI's third report, a number of acts of violence against ethnic minorities have been reported in the media and by civil society actors. In 2006, the latter reported 17 serious incidents of racist violence against immigrants and refugees, two on Roma and two on members of religious minorities. Reports indicate that on 24 July 2007, an Albanian was beaten to death by three Greek individuals in the city of Volos. It appears that the case was solved, although ECRI has no information on the sentence meted out to the culprits.

On 30 December 2007, eight Pakistani immigrants were attacked in their house in the Athens suburb of Aigaleo by a group of armed individuals, resulting in the hospitalisation of some of the victims for serious injuries. This incident, which was reportedly the fourth of this type in the last quarter of 2007, led to protest demonstrations in Athens in December 2007. ECRI has no information on measures taken against the suspects, although the police stated that they were carrying out an investigation.

Sources indicate high levels of hate crimes reported by immigrants in Greece in 2007, with 16.4 percent of respondents in one survey stating that they had been the victims of this type of crime. Racially motivated clashes between Albanian and Greek football fans occurred in March 2005 and ECRI notes with interest that, several Greek and Albanian writers appealed for calm and restraint prior to the game in question. As discussed in more detail below, anti-semitic acts, such as the desecration of tombs and vandalism against Holocaust memorials also continue to occur. ECRI notes with concern reports of continued violence by the police and border guards against Roma, refugees, asylum seekers and immigrants. There are also complaints about alleged police inaction over racially-motivated crimes and prejudice towards immigrants.

Source: ECRI Report on Greece, 2009, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-IV-2009-031-ENG.pdf>.

12. Hungary

12.1 Legislation prohibiting incitement to national, racial and religious hatred

The present constitutional position with respect to the balance to be found between freedom of expression and the prohibition of hate speech make it impossible to predict when the Additional Protocol to the Convention on Cybercrime will be ratified.

Amendments to Article 269 of the Criminal Code adopted in December 2003 were struck down by the Constitutional Court, which considered that they infringed the acceptable limits on freedom of expression as protected by the Constitution. In its decision (No. 18/2004), it reaffirmed its previous case-law (Decisions Nos. 30/1992 and 12/1999, themselves relying on positions taken by the Supreme Court at the turn of the twentieth century), reasoning that the legislator could limit freedom of speech through criminal sanctions only in cases of the most dangerous conduct, i.e. behaviour capable of whipping up such intense emotions in the majority of the people that, upon giving rise to hatred, they could result in the disturbance of the public peace; moreover, the Court stressed that an abstract threat is insufficient to meet this threshold: the danger to the public peace must be "clear and present".

As a result of this judgment – and whereas, in the views of many actors involved in combating racism, the Constitution could be interpreted differently – incitement against specific communities is not criminalised, and only the most extreme forms of hate speech, i.e. incitement liable to provoke immediate violent acts, are presently outlawed under Article 269 of the Hungarian Criminal Code. Moreover, as currently interpreted by the Constitutional Court, the Constitution appears to leave only a very narrow margin to legal draftsmen in defining what action may constitute a criminal offence when the freedom of speech has to be balanced against the protection of others' rights. Two new attempts have been made since this judgment was delivered to introduce broader prohibitions on hate speech into Hungarian law. In early 2008, on the initiative of six of its members, Parliament enacted a new amendment to the Criminal Code, taking a new approach based on abuse, and which would allow the prosecutor to initiate an investigation on broader grounds, including non-verbal abuse (such as the use of Nazi salutes). In October 2007, at the government's initiative, Parliament had also already amended the Civil Code. Previously, only identifiable individuals who were personally targeted by insulting or defamatory statements could seek civil law remedies such as damages; under the 2007 amendments, this right would be extended to individuals or associations belonging to a group of people generally targeted by broadly defined insults based on national, ethnic or racial identity.

However, neither of these sets of provisions has come into force, as they were each referred to the Constitutional Court for review prior to their promulgation. The Court was asked to examine the provisions from a number of angles, including possibly disproportionate limits on freedom of expression, questions as to whether the provisions were sufficiently clear to ensure legal certainty, possible discrimination against persons who are not members of minority groups protected by the provisions, and possible infringements of the right to self-determination of members of civil society organisations who did not feel insulted by a given statement but whose association decided to initiate legal proceedings. On 30 June 2008, the Constitutional Court found the 2008 amendments to the Criminal Code unconstitutional. At the time of writing, the result of the review of the Civil Code was not yet known.

Article 269B of the Criminal Code prohibits the use of certain totalitarian symbols. However, beyond this specific prohibition, none of the additional forms of racist expression listed above are prohibited under the criminal law in Hungary. Criminal law provisions: Article 174B of the Criminal Code defines specific offences, notably acts of violence, cruelty, or coercion by threats, committed against persons who are members or supposed members of national, ethnic, racial or religious groups. These offences are subject to more severe penalties than similar offences committed against persons not belonging to such groups. There is no specific form of crime or aggravating circumstance related to acts committed against property with a hate motivation; property is protected regardless of any special characteristics of the victims.

The Hungarian authorities have indicated that the overall scheme of specific, hate-motivated offences in Hungary includes the offences of genocide (Article 155 of the Criminal Code) and apartheid (Article 157), as well as the offences of violence against a member of a national, ethnic, racial or religious group (Article 174/B), incitement against a community (Article 269), and use of symbols of despotism (Article 269/B), mentioned above. In addition, certain articles of the Criminal Code, such as those covering murder or grievous bodily harm, expressly grant judges discretion to take account in sentencing offenders of the latter's "base motivations", where these are averred, and the Supreme Court has given guidance to judges on such matters. It is thus open to the judge in each such case to consider an offender's racist motivation as a form of base motivation and take it into account as an aggravating circumstance. Racist motivation is not, however, expressly listed in the relevant provisions as a form of base motivation, and no general provision exists in Hungarian law under which, for all ordinary criminal offences, racist motivation constitutes an express aggravating circumstance. ECRJ observes that as a result, it is practically impossible to monitor the situation with respect to racially motivated offences in Hungary; moreover, the absence of such a provision may mean that ordinary offences committed with racist motivations are not systematically prosecuted or punished as such. The fact that the harsher penalties provided for under Article 174B of the Criminal Code mean alleged perpetrators have a strong interest in not admitting to any racist elements in the acts they committed. As regards hate speech in

particular, many NGOs voice deep disappointment at the highly restrictive interpretation applied by the courts to the limits that may be imposed on free speech in this context.

Many argue that the existing provisions of the Constitution could be interpreted differently and a different balance struck between freedom of expression and freedom from hate speech. Others observe that even when conditions exist in which the present interpretation of Article 269 of the Criminal Code could have been used as a basis for bringing criminal charges, reliance has instead been placed on provisions concerning simple breaches of the peace. In early 2008, the Chief Prosecutor's Office of the capital brought proceedings for the dissolution of a newly created radical right-wing group. It seems that these proceedings are not based on the provisions of the Criminal Code, however, but on the Associations Act; the key question for the court is whether the organisation is acting contrary to its own articles of association or to the Associations Act, for example by restricting the liberty of other groups or by arming its members. The authorities have observed that similar proceedings were brought several years ago against another extreme right-wing organisation, which was dissolved by the Budapest Court on 1 December 2004.

Source: ECRI Report on Hungary, 2009, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/hungary/HUN-CbC-IV-2009-003-ENG.pdf>

12.2 Legislation protecting freedom of speech

The very high level of constitutional protection afforded to the freedom of expression has to date made it impossible for the authorities to legislate effectively against racist expression: under Hungarian law, only the most extreme forms of racist expression, i.e. incitement liable to provoke immediate violent acts, appear to be prohibited, a standard so high that it is almost never invoked in the first place.

Source: ECRI Report on Hungary, 2009, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/hungary/HUN-CbC-IV-2009-003-ENG.pdf>

13. Iceland

13.1 Legislation prohibiting incitement to national, racial and religious hatred

Steps are underway to ratify the Cybercrime convention. The Icelandic constitution does not specifically prohibit racial discrimination but the current clause seems to provide effective protection.

Section 180 of the Criminal Code prohibits racial discrimination and section 233a provides that any person who attacks another person by publicly ridiculing, slandering, insulting, threatening them on the basis of their (among others) nationality, colour, race, religion shall be liable to a fine or imprisonment for a term of up to two years. They are hardly ever used although there are reported incidents taking place. The police believe the victims are unwilling to report.

Article 125 stipulates that any person who publicly ridicules or dishonours the religion or worship of a lawful religious community in Iceland shall be liable to a fine or imprisonment of up to three months. Iceland does not have a provision that expressly considers the racist motivation of an offence as a specific aggravating circumstance. There is no specialised body to combat racism and racial discrimination at a national level.

Source: ECRI Report on Iceland, 2007, available at:

http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_03/03_CbC_eng/ISL-CbC-III-2007-3-ENG.pdf

14. Ireland

14.1 Legislation prohibiting incitement to national, racial and religious hatred

Ireland has not yet ratified the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

The Irish authorities have announced the review of the Prohibition of Incitement to Hatred Act of 1989 in consultation with ethnic minority groups in order to render it more effective is nearly complete.

There is no criminal law provision which defines racist offences as specific offences, nor is there one which provides for the racist motivation of a crime to be considered as an aggravating circumstance during the sentencing stage of a trial. Although the courts have the power to take any element, including the racist motive of the perpetrator into consideration, the fact that this power is discretionary has been recognised by the authorities themselves as a problem. An assessment is currently being carried out to establish whether there is a problem with regard to racist crimes before amending the law.

Source: ECRI Report on Ireland, 2007, available at:

http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_03/03_CbC_eng/IRL-CbC-III-2007-24-ENG.pdf

15. Italy

15.1 Legislation prohibiting incitement to national, racial and religious hatred

Law 645/1952 (implementing the Constitutional norm on the prohibition of reorganization of the fascist party) includes a general prohibition of racist propaganda.

Law 962/1967 (implementing the 1948 Genocide Convention) provides for criminal punishment in case of public speech praising/instigating to commit genocide.

Law 654/1975 (implementing the 1966 ICERD), Art. 3 par. 1a: it sanctions with detention (from a minimum of 6 months up to a max. of 1 year) OR with a max. 6,000 euros fee the offences of promoting in public and disseminating ("propaganda" of) thoughts based on racial/ethnic hatred, or of committing/inciting to commit actions discriminating on the account of ethnicity, nationality or religion. The current text of this provision results from the amendment made by **Law 205/1993**, further modified by **Law 85/2006**. Law 654/75 adopts the wide notion of "racial discrimination" provided by the ICERD.

The innovative features of the new wording of Art. 3, 1a L. 654/75 are the following: the 2006 amendment opted for detention or the payment of a fee as alternative punishments for the above mentioned offences; the offences addressed by the norm are now the "instigation" to commit actions of discrimination (in place of the "incitement" previously included), and the "propaganda" of racist ideas (instead of the mere "circulation").

Moreover, Law 205/93 has established

- i. a new aggravating circumstance (with consequent penalty increase of 50% max.) to be applied in case of conviction for any crime sanctioned with punishments different from life imprisonment, if the crime was committed with aims of discrimination or hatred based on ethnicity, nationality, race or religion, or in order to support the activity of organizations/groups pursuing the same objectives (Art. 3);
- ii. that leaders of groups/organizations aiming at inciting to racial discrimination or hatred envisage 1-6 years detention, while other participants are sanctioned with 6 months-4 years detention (Art. 1 amending Art. 3, par. 3 L. 654/75);

- iii. measures of prevention, such as the criminalization of the display of symbols belonging to racist organizations and the related prohibition to join public events showing those symbols (Art. 2).

The **Criminal Code** includes a set of provisions safeguarding religious beliefs and related worships (the penalties hereby entailed are fees only): other similar criminal patterns, exclusively dealing with the catholic religion as "official State religion", were declared unconstitutional (Constitutional Court's judgments issued from 1997 to 2002). It is to be mentioned that Italy has transposed the European Union Directive 2000/43 on racial equality (Legislative Decree no. 215/2003) and has introduced a specific civil law instrument to tackle discrimination based on race, ethnicity, nationality and religion, even when carried out by institutions/authorities (Articles 43-44, Immigration Law/Legislative Decree 286/98).

15.2 Legislation protecting freedom of speech

According to Article 21 of the Constitution everyone has the right to freely express his/her thoughts by oral or written means or any other form of communication. In particular, the press can not depend on authorizations or being submitted to censorship (except ex-post interventions due to judicial orders). The only general limit explicitly provided by Art. 21 is "morality". Relevant jurisprudence from the Constitutional Court and Supreme Court of Cassation attempted to find a balance between the wide scope of the freedom of expression as enshrined by Art. 21 (conceived as a cornerstone of the democratic system) and other fundamental rights to be safeguarded as representing the core content of human dignity. Furthermore, the Const. Court has deemed that also the general notion of public order implicitly constraints the freedom of speech: harsh criticism targeting public institutions does not amount to any infringement; however, if it entails an incitement to acts of violence, thus endangering the democratic system, the threshold is reached (Const. Court, judgement no. 126/1985).

16. Kyrgyzstan

16.1 Legislation prohibiting incitement to national, racial and religious hatred

On 20 February 2009, there were amendments made into the Criminal Code which introduced criminal liability for "organized activities, aimed at incitement of national, racial, religious or inter-regional enmity", article 299-1. Before the amendments the liability was provided basically for "incitement of national, racial, religious or inter-regional enmity", article 299.

17. Norway

17.1 Legislation prohibiting incitement to national, racial and religious hatred

Section 135a of the Criminal Code states that any person, who willfully or through gross negligence publicly utters a discriminatory or hateful expression, shall be liable to fines or imprisonment for a term not exceeding three years. An expression that is uttered in such a way that it is likely to reach a large number of persons shall be deemed equivalent to a publicly uttered expression, cf. section 7, No. 2. The use of symbols shall also be deemed to be an expression. Any person who aids and abets such an offence shall be liable to the same penalty. A discriminatory or hateful expression here means threatening or insulting anyone, or inciting hatred or persecution of or contempt for anyone because of his or her a) skin colour or national or ethnic origin, b) religion or life stance, or c) homosexuality, lifestyle or orientation."

Three main changes were recently made to section 135a: firstly, the maximum penalty provided for in case of breach was raised from two to three years' imprisonment. Secondly, gross negligence on the part of the perpetrator is now sufficient for the offence to occur. Thirdly, it is no longer necessary for the expression to have been made in public or otherwise disseminated to the public. It is sufficient for such expression to have been made in a way that makes it fit for public dissemination, irrespective of whether it actually reaches the public or not.

Legislation recently adopted explicitly provides in law that racist motivation constitutes a specific aggravating circumstance in respect of all offences: Section 77 of the Criminal Code now provides that such an aggravating circumstance occurs when the background of an offence is inter alia, another person's religion or belief, skin colour, national or ethnic origin or other circumstances concerning groups who are in special need of protection.

Source: ECRI Report on Norway, 2009, available at:
<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/norway/nor-cbc-iv-2009-004-eng.pdf>

17.2 Legislation protecting freedom of speech

Section 100 of the Constitution: the first two sections of Article 100, as amended, stipulate that: "(1) There shall be freedom of expression; (2) No one may be held liable at law, except on the basis of contract or other private legal basis, for having conveyed or received information, ideas or messages unless such liability can be justified in consideration of the reasons for the right to freedom of expression namely the search of truth, democracy and the individual's free formation of opinions. Such legal responsibility must be clearly prescribed by law." The new formulation of Article 100 of the Constitution, which entered into force on 30 September 2004, allows for the punishment of racist expressions to a greater extent than before.

Source: ECRI Report on Norway, 2009, available at:
<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/norway/nor-cbc-iv-2009-004-eng.pdf>

18. Poland

18.1 Legislation prohibiting incitement to national, racial and religious hatred

There is no provision in the criminal code expressly rendering the racial motivation of an offence an aggravating circumstance (although motivation as a whole can be taken into account). The convention on cybercrime has not been ratified, although the authorities have stated they are prepared to do so. Specific grounds of discrimination, such as race or religion, are not listed in the discrimination clause of the Constitution. Articles 256 and 257 of the Criminal Code punish the incitement of racial or religious hatred. Article 119 punishes violence and threats on the basis of national, ethnic or religious affiliation.

Source: ECRI Report on Poland, 2010, available at:
<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/poland/POL-CbC-IV-2010-018-ENG.pdf>

19. Slovakia

19.1 Legislation prohibiting incitement to national, racial and religious hatred

The Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems have not yet been ratified by Slovakia.

On 1 January 2006, a new Criminal Code entered into force in Slovakia. The authorities have informed that this Code forbids the menacing of an individual or a group of persons with restricting their rights and freedoms for reasons of their belonging to a national minority, a race, or an ethnic group, or because of their skin colour; the Criminal Code also prohibits inciting restriction on the rights and freedoms of a nation, a national minority, a race or an ethnic group (Sections 421-423).

Section 140(d) of the Code provides that the fact that certain crimes are committed because of national, ethnic or racial hatred or hatred based on skin colour is considered to be an aggravating circumstance. The authorities have informed ECRI that the provision on aggravating circumstances applies, among others, to murder, manslaughter, grievous bodily harm and actual bodily harm, threats as well as the desecration of cemeteries. The new

Criminal Code also punishes, inter alia, supporting and promoting groups leading to the suppression of fundamental rights and freedoms of individuals through violence, threat of violence or threat of other serious harm (Sections 421 and 422). It provides for the punishment of anyone who publicly manifests their sympathy, especially by means of banners, badges, uniforms or slogans, for movements leading to the suppression of fundamental rights and freedoms by violence, the threat of violence, or the threat of other serious harm.

Source: ECRI Report on Slovakia, 2009, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovakia/SVK-CbC-IV-2009-020-ENG.pdf>

19.2 Other information or observations in relation to the public discussion of both

A rise in racist political discourse by some politicians targeting primarily Hungarians as well as Roma and Jewish people has been noted since the coalition government comprising the Slovak National Party took power in 2006. Few measures have been taken to address this problem by, among others, implementing relevant provisions of the Criminal Code. An Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance which has been periodically renewed since its adoption in 2000 exists in Slovakia. However, little appears to have been done in the framework of this plan to combat incitement to racial hatred, including by political figures, as a complementary measure to the implementation of the relevant provisions of the Criminal Code. Cases of anti-semitic attacks against Jewish persons or memorials and synagogues have been brought to court. However, although the above-mentioned Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance contains a goal on monitoring anti-semitism as well as education and awareness-raising of this problem, no specific measures in that regard appear to have been taken.

Racism in Public Discourse:

There has been a worrying increase, since the coalition government comprising the Slovak National Party took power in 2006, in racist political discourse chiefly against the Hungarian minority as well as against, inter alia, Roma and Jewish. This discourse has resulted in, among others, an increase in negative attitudes by youngsters, as well as the public in general, against minority groups and, in particular against Hungarians. However, no measures appear to have been taken to sanction this type of discourse or to apply the relevant provisions of the Criminal Code to politicians who engage in it. The authorities have informed ECRI that the above-mentioned Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance endeavours, among others, to increase tolerance among all inhabitants of Slovakia, and that the priorities for the 2006-2008 Action Plan include education and training of professional groups who, while discharging their duties, have an impact on the prevention of, among others, discrimination, racism, anti-semitism and xenophobia. The authorities have indicated that the implementation of the Action Plan, which is created and implemented under the auspices of the Office of the Deputy Prime Minister for a Knowledge-Based Society, European Affairs, Human Rights and Minorities, is regularly evaluated. They have also indicated that interim reports are discussed by the Slovak government and that the non-governmental sector plays an important role in implementing its goals.

However, no more detailed and specific information has been made available on the manner in which the Action Plan in general and this objective in particular have been implemented. In the light of the current political discourse against ethnic minorities, the implementation of this Action Plan should place a special emphasis on fighting incitement to racial hatred. The rise in anti-Hungarian discourse by some political figures has created a negative public climate which has led to an increase in intolerance against the Hungarian minority in Slovakia as well as acts of racially-motivated crimes against members of this group. For example, in August 2006 an ethnic Hungarian university student Hedviga Malinová in Nitra was allegedly physically assaulted by two young men after they heard her speaking Hungarian: it appears that the case is still on-going. This case illustrates the intolerance against members of the

Hungarian minority created by political figures' negative discourse, who have not been subjected to the legal or political consequences this type of discourse warrants.

Since 2001, the 9th of September has been designated as a "Memorial Day for Victims of the Holocaust and Racial Violence" in Slovakia. On this day, which is commemorated under the auspices of the President of Slovakia, wreaths are laid at the memorial of victims of the Holocaust in Bratislava. Representatives of the Jewish community have informed ECRI that the Ministry of Education has stated that all pupils and students should pay a visit to the Auschwitz concentration camp. However, Jewish community representatives have provided information about instances of anti-semitic physical attacks, mostly against Jews who wear traditional attire. Anti-semitism on the Internet has also been noted. A number of cases have been brought to court for anti-semitic acts including attacks against buildings such as memorials, synagogues and schools.

A regrettable incident occurred in the Slovak Parliament on 4 September 2008 whereby the Minister of Justice made several anti-semitic statements to a fellow politician of Jewish origin. Although the Slovak Prime Minister distanced himself from the statements and ECRI has been informed that this is the first such occurrence in many years, it considers that a strong message should be sent that these types of statements are unacceptable so as to avoid this incident setting a dangerous precedent. This is all the more important in the light of the position held by the person who made the statements.

Source: ECRI Report on Slovakia, 2009, available at:
<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovakia/SVK-CbC-IV-2009-020-ENG.pdf>

19.3 Relevant policies in relation to incitement to hatred and/or freedom of speech

A. The Government of the Slovak Republic Action Plans to Prevent All Forms of the Discrimination, Racism, Xenophobia, Anti-semitism and Other Forms of Intolerance

2001-2002

Action plan to Prevent All Forms of the Discrimination, Racism, Xenophobia, Anti-semitism and Other Forms of Intolerance for the Period of 2000-2001
Resolution of the Government of the Slovak Republic No. 283/2000 Concerning the Action Plan to Prevent All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance for the Period of 2000-2001
Explanatory report Concerning the Action Plan to Prevent All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance for the Period of 2000-2001

2002-2003

Action plan 2002 - 2003 and resolution of the Government of the Slovak Republic No. 207/2002, Submission Report Action Plan 2002-2003

2004-2005

Conference on the occasion of the International Day of Human Rights - "Importance of Human Rights in Modern Society: Slovakia One Year after Entry into EU", Joint Statement by Conference Participants on the International Human Rights Day, 9.12.2005

2006-2008

Action plan to Prevent All Forms of the Discrimination, Racism, Xenophobia, Anti-semitism and Other Forms of Intolerance for the Period of 2006-2008
Resolution of the Government of the Slovak Republic No. 287/2006 of the of 5 April 2006 Concerning the final evaluation of the Action Plan to Prevent All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance for the Period of 2004-2005 and Action Plan to Prevent All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance for the Period of 2006-2008

B. The Manifesto of the Government of the Slovak Republic - August 2006 (extracts)

3. Social policy

.....

The Government will propose measures to prevent the continuous growth of social and pathological phenomena, especially in children. It is necessary to adopt the necessary measures to solve the problems of the juvenile crime rate and juvenile delinquency, cruelty, abuse and endangering of children, drug addiction, demonstrations of intolerance and other negative phenomena.

.....

It is the aim of the Government to provide funds for the long-term programme of training and education of Romany children, and support Romany employment. It is necessary to make the Romany community interested in the improvement of the quality of their lives.

Support for Social Inclusion

The Government's priority will be to reduce, as efficiently as possible, the extent of Slovakia's poverty rate, which is one of the highest among EU states. The Government rejects the claims that deepening poverty is the result of a person's failure. It will therefore provide maximum support to combining the responsibility of the person for his or her destiny and for that of his or her family, with social solidarity and assistance from the state, territorial self-government bodies, churches and religious associations, institutions, and civil society, including self-support groups.

In connection with addressing the poverty issue, the following concepts will have to be defined in legislation: minimum living allowance, social minimum, condition of material need, condition of social need, and social housing.

The Government will reconsider the establishing of the subsistence minimum so that subsistence minimum will be the basic amount from which the amount of measures of particularly of financial nature is derived, reflecting the actual basic subsistence needs and, at the same time, that it is an efficient means to resolve situations requiring financial intervention.

The Government will reconsider the parameters of the benefit and contributions towards addressing material need so that the assistance is adequate to basic subsistence needs while maintaining the principle of dedicated provision and subsidiarity, motivational elements aimed at activation, and joint responsibility of individuals and families in dealing with their unfavourable situation and poverty prevention.

To eliminate the causes of poverty and social exclusion of individuals and groups, including marginalised Roma communities, the Government will adopt measures with an emphasis on creating conditions for implementation of non-financial measures such as, for example, social services, social and legal protection measures, social guardianship, community development, support of local partnership of social inclusion, subsidy programmes to improve equal opportunities, motivation and support for access to education and health care also with the objective of realistic strengthening of social cohesion. At the same time, the Government will consequently require adherence to the principle of subsidiarity and performance of competences by all responsible entities.

The Government will pay due attention to improving quality in the social work field, support professionalism and increasing the status of field social workers.

The Government will create the legislative environment for the development of social services, which will guarantee their beneficiaries dignified living conditions and will be aimed at their activation. The Government will ensure the interlinking of social services and health care and modify the system of their funding. The Government will make an effort to create the conditions for the development of businesses in the field of social services, based on the non-profit principle. Special attention will be paid to the elderly and to the disabled who are dependent on assistance from another person, so that they can remain in the family environment as long as possible and it will make an effort to improve the financial situation of their care provider.

The Government will draft provisions concerning social and legal protection of the elderly and of the disabled, who are unable to protect their rights independently. At the same time, it will

make legislative provisions for the protection of apartment tenancy for the elderly, for the severely handicapped, and for families with dependent children.

The Government will establish the Governmental Council for Seniors as its consulting body for the issues concerning the issues of the elderly.

The Government will ensure the handing over of competencies in the area of material need to the municipalities as the transferred performance of state administration, limiting the general payment of the benefit in material need and introducing addressed and cash free assistance, while at the same time also making more prominent provisions for the possibility of using the institution of special beneficiary in provision of the assistance in material need.

3. 5 Support of Gender Equality

The Government when pursuing its policy shall support equality of men and women as an important factor in the development of democracy and the exercising of human rights, so as to fulfil obligations following from the Lisbon Strategy, as well as from international treaties.

The Government shall therefore secure regular monitoring of equal opportunities for men and women, and it will also create institutional structures for assertion of such issues in all policies and decisions that are being adopted within the framework of decision-making processes. This will take place at all levels of the governance of the society.

The Government when implementing its policy shall strictly observe the principle of the same treatment of men and women, and implement steps to eliminate any forms of discrimination. Inclusive in this are reasons of sex, religious conviction or belief, racial origin, national or ethnic origin, disabled from the aspect of their health, as well as ageism or sexual orientation.

The Government shall focus, within the framework of preventive programmes for elimination of domestic violence, to more efficient provision of a comprehensive multidisciplinary approach, efficient assistance to victims of violence and creation of a wide spectrum of cooperating entities providing services that correspond with European standards in this field.

The Government shall exert its maximum efforts in order to ensure that the European Gender Equality Institute is established in the Slovak Republic, and it shall participate initiatively in the European Year of Equal Chances for All (2007).

6. 4 Local and Minority Culture

The Government is aware of the fact that objectives of the cultural policy cannot be reached without the support and development of the local and minority culture. That is why it will intensify the dialogue with the territorial and local self-governments and their organizations on the issues of culture and the target-oriented support of cultural activities of citizens at the local and regional level. The Government will support methodological and consultation assistance to cultural institutions from the perspective of the corresponding specialised workplaces within the competence of the Slovak Ministry of Culture.

The Government will provide for the support of culture of national minorities and ethnic groups and disadvantaged groups of citizens by means of a system of grants. It will at the same time also support the development of the Slovak culture in territories with mixed languages.

Churches and Religious Societies

The Government considers maintaining harmonious relations of the State with the Churches and religious societies to be important. It declares its interest in developing a partner-like dialogue with their representatives in all fields where they are committed in terms of solving society-wide problems and it will support the social, cultural, educational and other activities of churches and religious societies that are beneficial for the public. The Government respects the valid legislative framework applicable to activities of Churches and religious societies, and it is ready to fulfil its obligations following from it.

7. Democracy and Rule of Law

7. 1 Democratic State

The Government, in the interest of developing the multiethnic and multicultural character of the society of citizens of the Slovak Republic, will fight against all forms of racial, ethnic, religious and political hatred. The Government undertakes to wage a permanent struggle against discrimination, racism, anti-Semitism, xenophobia, extreme nationalism and chauvinism, and for the promotion of truth about the Holocaust. The Government shall proceed in its relation to national minorities in the spirit of the approved wording of the

European Charter of the Regional or Minority Languages and it shall create conditions for establishment of the Office for Minorities in the SR.

The Government shall create a democratic environment for the freedom of thought, conscience and religious belief. It will respect the status and tasks of churches, religious societies and other associations and citizens without a religious confession on the principle of equality and preservation of plurality.

The Government guarantees to all citizens – regardless of their sex, race, colour of complexion, language, belief and religion, political or other ways of thinking, ethnical or social origin, property, gender or any other status – that it shall respect all the fundamental human rights and freedoms. Among these rights and freedoms belongs also the right of the human being, of the citizen, to decide freely about his/her ethnic identity. But at the same time it underlines that it will not harm anyone, nor place anyone at an advantage or disadvantage by its decisions due to these reasons.

.....

The Government acknowledges the solution of the Roma problems for its priority. It will support and implement all programmes of development with the objective to improve the life of the Roma and integration of the Roma community into society, while efficiently using funds that are target-oriented in the fields of education, culture, health care and social care, infrastructure and housing.

The Government shall prepare the continuation of the strategy of solution of the Roma national minority. In the interest of more operative efficiency of implementation of the respective intents it will finalize building of specialized and specific capacities directly in those regions where citizens of the Roma nationality predominantly live. The Government will create conditions for the real integration and inclusion of the Roma ethnic group, with the objective to increase its standard of living – on the basis of the broadest consensus on the one side and the political will on the other.

7.3 Internal Order and Security

.....

The Government will adopt a stricter course against extremism. It will not tolerate any illegal activities of members and supporters of extremist groups and movements and will act decisively in the cases of threat to peace and order, rights and freedoms of persons based on their national, racial or other difference. It will prepare a draft law on combating extremism comparable to the legal provision for combating this negative phenomenon in democratic states of Europe. It will create conditions for personnel and financial strengthening of the security structures combating this negative phenomenon.

C. Civic responsibility and co-operation - Manifesto of the government of the Slovak Republic for the period of 2010 – 2014, August 2010 (extracts)

3. State for Citizens

3.1 Protection and Promotion of Human Rights

The respect for fundamental rights and freedoms is the key requirement for the development of a modern democratic state and fair and just society. A failure to respect human rights undermines the very foundations of the rule of law. On that account, the Government will rigorously protect and promote human rights.

The Government will remedy restrictive legislative and political measures taken in the previous period that are inconsistent with human rights principles. In a short time, the Government will draft amendments to the Act on periodical press and agency information service and on amendments to certain acts (the Press Act), the State Language Act, the Act on Citizenship, the Legislative Rules of the Slovak Government, etc., so that they respect human and minority rights guaranteed by the Constitution of the Slovak Republic and international treaties and conventions binding upon the Slovak Republic. The Government will initiate remedying individual cases where the dignity of a citizen might have been infringed upon by the state.

The Government will endeavour to enhance the application of human rights principles in activities carried out by the Government and state authorities. A policy on the protection and promotion of fundamental rights and freedoms requires an active approach, and support from the Government and the state and must be reflected in the drafting of generally binding regulations and implementation of international standards.

The Government will pursue a more effective and flexible functioning of all institutions and mechanisms serving for the protection and promotion of human rights, such as the Slovak National Centre for Human Rights and the Centre for Legal Aid. It will strengthen existing and/or adopt new governmental programmes and institutional mechanisms to protect the human rights of marginalised and disadvantaged groups in the population. In making, implementing and evaluating government policies and their impacts, the Government will enforce measures to eliminate gender-based discrimination.

In addition to first-generation human rights, the Government will also facilitate application of second and third-generation human rights. The concept of human dignity entails not only protection against unacceptable and needless interventions by the state in the life of individuals, but, equally, the need for their spiritual and intellectual development and befitting social and economic conditions. Rights to education, dignified housing and a healthy environment are rights that require an active approach from the state in the form of creating basic frameworks and conditions for their accomplishment.

The Government will consistently fulfil its international obligations with respect to human and minority rights, including its reporting duties towards treaty and monitoring bodies of international organisations and building on international human rights treaties and conventions to which the Slovak Republic is a State party. In the implementation of its human rights obligations, the Government will strengthen mutual cooperation and coordination among individual central government bodies and other relevant bodies and institutions.

With respect to this task, as well as with respect to the implementation of other segments of the state human rights policy, the Government will closely cooperate with nongovernmental not-for-profit human rights organisations and bodies of international organisations operating in the Slovak Republic.

The Government will create conditions for citizens, including minority members and individuals with permanent residence in the territory of the Slovak Republic, to exercise their right to effective participation in public governance. This right must include their right to access information and the right to effectively influence decision-making processes that substantially affect them.

The cooperation between the Government and civic society actors will therefore be based on the principle of partnership between the non-governmental sector and public authorities. It will require that adequate mechanisms be created to strengthen the sustainability of non-governmental organisations, as well as independent analytical centres and advocacy organisations.

The Government sees large room for improvement in the area of human rights education and training. It will improve human rights education at schools of all levels. It will support human rights education of employees in all sectors of the state and public administration who are in direct contact with citizens. In addition, it will strengthen awareness-raising activities on human rights and freedoms and support projects aimed at increasing citizens' knowledge of their rights, freedoms and duties. It will introduce a modern concept of citizenship and human rights into the preparation of school curricula.

The Government recognises and appreciates the importance and contribution of cultures of traditional national minorities living in Slovakia to its cultural heritage, spiritual values and cultural diversity. On that account, the Government will create the best possible conditions for national minority members to exercise their right of expression, preservation and development of their own identity. This principle will also be strictly taken into account during methodological and organisational preparations for a population census to be carried out in May 2011.

The state must actively support preservation and further development of culture and knowledge of its national minorities. In order to accomplish this task and to enhance social coherence in Slovakia, the Government will prepare a long-term policy on the protection and promotion of culture and school systems of national minorities, including the Roma minority, as well as a long-term policy on inter-ethnic cooperation, inter-ethnic dialogue and intercultural training and education, including necessary institutional and financial mechanisms. The Government will promote creating appropriate room for an intercultural dialogue and exchange of positive information content in the work of public media and, if possible, of other media, too. The Government will mainly focus on improving intra-state Slovak-Hungarian relations and relations between the majority population and the Roma community, and will seek inclusive understanding and practicing of citizenship.

As its priority, the Government will draft a bill on the protection of and support for the preservation and development of national minority cultures which will enact their integral position in the context of cultural wealth and diversity of the state and set out the rules for their financing. In managing and financing national minority schools, in methodological assistance and preparation of curricula, the Government will pay increased attention to the actual needs and interests of national minority members.

The Government has established the post of a Deputy Prime Minister for Human Rights and National Minorities, with stronger managing and decision-making powers in the area of national minority culture and education.

When performing his/her tasks, the Deputy Prime Minister will closely cooperate and consult with national minority representatives. In order to ensure the exercise of co-decision making powers of the Deputy Prime Minister for Human Rights and National Minorities, the Government will restructure the education ministry so that the co-decision making powers could be exercised in the inspection of national minority schools and in their research and development activities within the system of a methodology and pedagogical centre, utilizing the capacities of the universities in Komárno, Nitra and Prešov.

With respect to the education system, the Government will encourage improvements in the quality of teaching mother languages of national minorities, as well as the quality and effectiveness of teaching the Slovak language at schools that have a minority language as their teaching language. The Government will support innovation in teaching methods at minority schools, including the supply of up-to-date and modern textbooks, and strengthen cooperation among schools having Slovak as their teaching language and schools teaching in minority languages. The Government will continue supporting Ukrainian minority schools. In regions with a Ruthenian minority population, the Government will ensure that Ruthenian language and culture classes are taught at elementary and secondary schools. The Government intends to also address the aforementioned systemic issues concerning the development of the minority school system by amending the existing School Act.

The Government will support consistent implementation of a constitutional right of national minority members to address the issues related to the identity of national minorities.

The Government will amend the statute of the Government Council for National Minorities so as to make this body a representative and functioning forum for the national minorities living in the Slovak Republic that will give them room for effective participation in governing their own affairs. In addition to amending the State Language Act, adopting a new act on the protection of and support for the preservation and development of national minority cultures and amending the School Act, the Government will also implement the principle of effective equality of all Slovak citizens through an amendment to the Act on the Use of Minority Languages, the Act on Geodesy and Cartography and the Act on Displaying Names of Municipalities in Minority Languages, and other related regulations. The Government will consistently apply recommendations under the Charter for Regional or Minority Languages; in doing so, it will focus on addressing the problems identified in evaluation reports. The Government will set up a group of experts in order to prepare a background paper for the Government concerning the possibilities of, and alternatives to, drafting an act on the position and rights of national minorities, which could possibly be adopted during its current term.

The Government will ensure and assign necessary personnel capacities and financial resources to the office of the Deputy Prime Minister for Human Rights and National Minorities in order to accomplish the objectives set out under the human and minority rights policy.

Special attention will be given to the status, integration and development of the Roma community, which represents a cross-cutting issue. In order to accomplish the said objective, the Government will strengthen the position and powers of the Government Plenipotentiary for Roma Communities and of the Plenipotentiary's office.

A large population of the Slovak Roma remains one of the weakest and most vulnerable social and economic groups, affected by poverty and social exclusion which they are unable to overcome on their own. Social exclusion is a crucial, society-wide problem because, in addition to its negative impact on the development potential of regions, it also undermines relations among citizens, escalates tensions with the majority population, and increases the risk of rising extremism.

The Government will endorse full participation of Roma in social, cultural and political life on the basis of their national minority status, as well as with respect to addressing key problems related to socially-excluded Roma communities. Necessary measures will be implemented by

the Government through targeted long-term and coordinated policies, whose impact could be measured objectively and designed to accomplish the effective equality of all citizens.

Approaches to be adopted by the Government will respond to actual needs and priorities of municipalities, regions and the Roma themselves; they will be comprehensive and balanced with respect to addressing the social situation of the Roma and respect for human rights on the one hand, and to strengthening the principle of individual responsibility of the Roma on the other. Social inclusion measures will be designed in such a way that they lead to the observance of social standards and values.

The Government will particularly focus on the application of the following principles:

- Effective application of antidiscrimination laws, combating racial and ethnic discrimination in education, employment, housing, health and social services;
- increased engagement of self-governing units and affected municipalities to make special temporary measures more effective and better targeted;
- Support to the participation of Roma in public and political life and increasing their individual responsibility;
- Enforcing comprehensive approaches in the utilisation of EU funds for the development of municipalities with Roma communities and preserving the continuity of proven and successful programmes.

Implementing the aforementioned principles, the Government wishes to contribute to a higher level of social coherence among the citizens of the Slovak Republic, members of the majority Slovak population and all minorities. The Government wishes that cultural and ethnical diversity is not seen as a burden but, quite the contrary, as an element enriching the state, an impetus to make minorities feel at home in Slovakia, and augmenting the human, civic, cultural and economic capital which will reinforce the quality of democracy and strengthen Slovak society as an active component of the European democratic community embodied by the EU.

3.2 Labour, Social Affairs and Family

...

Roma settlements and marginalised communities

The Government will prepare a draft act on socially excluded communities (SECs), which will define SECs and set out priorities and practices for addressing problems of SEC members.

The Government will prepare a project of zero grades at elementary schools, enhance involvement of SEC children in pre-school and secondary education, and give more powers to assistants. The Government will implement measures to remove segregation in the school system and prevent unreasonable inclusion of SEC children into special schools, and introduce maturity testing in the Roma language. The Government will revise the system of pedagogical and psychological and special pedagogical consultancy.

The Government will propose a method for the settlement of ownership titles to lands in SECs and encourage investments in basic infrastructure. The Government will define the concept of social housing and support a system of interchange multi-level social housing based on the merit principle.

In order to ensure more effective protection against crime, the Government will reinforce operation of the police force. The Government will create conditions for the integration of Roma into the police force, introduction of so-called SEC "patrolmen" and cooperation between the police and field workers.

The Government will complete a network of community centres with defined standards they must meet (for example, equipment, social field workers, and medical assistants).

The Government will support activities carried out by local governments, churches, charities and third-sector organisations which deliver demonstrable results in addressing SEC problems.

The Government will introduce analyses and continuous SEC surveys (e.g., on education, employment, health conditions, crime, etc.) which will serve for the assessment of impacts of public policies and effectiveness of implemented programmes. Reporting units will be communities defined as groups of people subjectively defined by the majority population as SEC members.

Art and state language

.....

The Government will ensure the protection and development of the state language and see to the strengthening of its role as a means of communication and social integration in compliance with the principles of non-discrimination so that national minority rights are ensured at the 2006 level. The Government will remove senseless restrictions and constraints in legislation concerning national minorities.

Disadvantaged groups, churches and religious communities

The Government will create conditions to facilitate access by disadvantaged groups of the population to culture and information, and assist them in satisfying their cultural needs and equalising opportunities in the area of culture.

The Government will further develop the existing successful cooperation and fair dialogue with representatives of churches and religious communities and initiate a public discussion on the issue of church financing.

4.2 Internal Order and Security

.....

The Government declares that there is no place for expressions of extremism in our society. It will use all its lawful powers and tools to combat extremism, including through strengthening and increasing the quality of the structures for the fight against extremism in terms of their staffing and professional competence. By using all available means, the Government will prevent extremists from taking the initiative to address the problems of the Roma community. The Government will enforce a zero tolerance policy against perpetrators of individual, group or institutional violence committed in conflict with the principles of human rights guaranteed by the Constitution of the Slovak Republic and international treaties. After it has carried out the analysis of the current situation, it will approve a new concept of the fight against extremism.

20. Spain

20.1 Examples of or information on relevant jurisprudence on incitement to hatred and/or freedom of speech

A. RACIST CONDUCTS AND RELIGIOUS HATRED

JURISPRUDENCE

Regional Court of Barcelona

With regards to articles 510 and 607.2 of the Criminal Code, Pedro Varela, the owner of a book store in the city of Barcelona has been indicted several times for selling and writing material that exalts and justifies the Genocide against Jews and for organizing in his store several activities, talks and conferences of historians that deny the Holocaust, such David Irving, or the initiator of Ku Klux Klan (KKK), David Duke.

.On September 25 of 1992, in a European tour, Varela was detained in Austria, accused of spreading the national-socialist ideology. He was put in prison for four months and acquitted later due to his lack of knowledge of the Austrian legislation.

In 1996 with the new Spanish Criminal Code that recognized for the first time in history the incitement to racial hate and anti-semitism as a felony (article 510), the activity of Varela and his book store became illegal and thus, punishable.

(http://observatorioantisemitismo.fcje.org/?page_id=88)

Varela was condemned in 1998 to seven months in prison for enhancement/incitement of genocide. In the indictment, the Israeli community in Barcelona acted as the prosecutor of the case.

The sentence condemned Mr. Varela for the felony of incitement to racist hate and anti-semitism (article 510) and denial and justification of the genocide against Jews (article 607.2).

However in the appeal stage, the same magistrate put forward an unconstitutionality question concerning article 607.1 of the Criminal Code, applied to condemn Mr. Varela. Thus the entire process was pending a final decision of the Constitutional Court.

The Constitutional Court:

It decided in 2007 that the act of denying the genocide against the Jews (article 607.2) could not necessarily constitute a crime as the freedom of expression has preeminence and denying the genocide is an irrelevant opinion as long as the act is executed in such a manner that does not imply that it can feasibly and in reality incite to racial, religious or ethnic hate. Consequently, the Court considered that article 607.2 of the Criminal Code is not unconstitutional. (Pleno. Sentencia 235/2007, 7 of November 2007).

(The sentence can be found at:

<http://www.tribunalconstitucional.es/es/jurisprudencia/Paginas/Sentencia.aspx?cod=9396>)

Of the twelve votes of the Constitutional Court, three of the judges were in disagreement as they were of the understanding that the denial of the genocide is the beginning of a discourse of hate and racism. This was stated by the European Court of Human Rights: nobody denies in abstract without continuing that denial in their discourse.

After knowing the decision of the constitutional appeal, a new hearing took place on March 5, 2008, where the Regional Court of Barcelona decided again in the following terms:

“DECISION: I should condemn and condemn Pedro Varela Geiss as legally responsible in the degree of author for the continual crime of Genocide, which is foreseen and punished in article 607.2 of the Criminal Code, and thus, as circumstances that would modify his criminal responsibility do not concur, I impose him the penalty of two years in prison, with the inherent legal accessories, such as the payment of procedural costs. Also, I must condemn and condemn to that person as the author of a continual crime committed in the exercise of the Fundamental Rights and Public Liberties guaranteed by the Constitution, meaning, the incitement to discrimination, hate and violence against groups and associations for reasons of their race and anti-semitic acts, being all of those conducts foreseen in article 510.1 of the Criminal Code. As circumstances that would modify his criminal responsibility do not concur I impose a penalty of three years of prison and a daily fine of two thousand pesetas, with hundred and eighty days of personal responsibility in case of non payment of the fine and procedural costs”.

Criminal Court number 23 has recently condemned to two years of prison and fine of 1.200 euros to Aitor R.E, a 23 year old man, after the Defense and the Prosecutor reach an agreement, for spreading genocide ideas through internet.

It is the first case of such nature that reaches the judicial stage. Previous cases were condemned for dissemination of this type of ideas but never through the web according to the defendant's lawyer. The young man was condemned for a crime against fundamental rights and enhancement/incitement of genocide.

The prosecutor requested a sentence of four years and eight months imprisonment. However, an agreement was reached and the young man, who has a clean criminal record, will not be put in prison as he was sentenced to under two years imprisonment.

According to the accusation, the accused included several videos in his web pages that referred to the III. Reich and Hitler's and Goebbels' private lives. Moreover the web contained a link to access a library holding clearly xenophobic books such as "Mein Kampf" and "The second Leuchter report".

In the search of Aitor RE's domicile in April 2007 a graffiti saying "F18" over a svastik and cross was found on his front door. Inside the house there were documents entitled "Compulsory reading for amateurs and future members of FNS (National Socialist Front)-F18" and "Advise on how to organize Cells". Documents were also found that referred to conferences held in the "Europe" Bookshop as well as propaganda leaflets and templates for their design bearing messages such as "against homosexuality", "Adolf Hitler was right" or "the white race is in danger".

<http://www.lavanguardia.es/internet-y-tecnologia/noticias/20100616/53946302961/condena-pionera-en-espana-por-difundir-ideas-genocidas-por-internet-adolf-hitler-barcelona-iii-reich.html>

B. FREEDOM OF SPEECH

Recent jurisprudence and current discussion:

The national newspaper El País (edición C. Valenciana 5 September 2010) calls the attention to a sentence emitted on 4 September, 2010, by the Administrative Court number 1 of Alicante against a decision of the Education Department of the Autonomous Community of Valencia. The court decided in favor of the freedom of expression of the Director of the Secondary Education Institute Les Nòries in Alicante, José Luis Santiago. The court decided to null a sanction imposed by the Education Department against the Director for having hung on the walls of the Institute the up side down picture of the Counselor of Education, Alejandro Font Mora, saying “unwanted person”, during public demonstrations against the obligation to teach the subject “education for citizenship” in English.

The sentence renders the sanction null. That sanction suspended Mr. Santiago of employment and salary for twenty days. The Court also condemns the Education Department to compensate Mr. Santiago for the economic loss caused by the sanction and opens up the possibility to a further compensation for other damages. The Court decision states that freedom of expression includes the “criticism of others, even when it could be tasteless and it could bother, disquiet or displease”. The Court continues by saying that it is a requirement of pluralism and that the “permissible limits of criticism are broader when it is referred to persons that are exposed to the public control of their activities and expressions, due to their engagement in issues of public relevance”.

Mr. Gerardo Fernández, president of honor of UGT (General Union of Workers) in Valencia, has manifested that this court decision has a symbolic value as it protects the right of freedom of expression against subordination or the principle of authority of the functionary. This decision can still be appealed.

http://www.elpais.com/articulo/Comunidad/Valenciana/juez/anula/sancion/Educacion/director/instituto/Monforte/Cid/elpepiespval/20100905elpval_2/Tes

20.2 Relevant policies in relation to incitement to hatred and/or freedom of speech

- Establishment of the Team on Racism and Xenophobia in the Ministry of Interior and Administration

The Monitoring Team on Racism and Xenophobia was established in the Ministry of Interior and Administration. The activities of the Monitoring Team concentrate primarily on the collection of data and information on events that might have been caused by discrimination on the grounds of ethnic origin or race. The Team also monitors how these cases are examined by public authorities (by the Police, Prosecutor’s Office, courts, etc.) and cooperates with non-governmental and international organizations, the Police and the Prosecutor’s Office. Recently, the Team has been paying particular attention to the development of a proper training program aimed at combating hate crimes. This program is being created within the framework of Law Enforcement Officers Program on Combating Hate Crimes, prepared by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

- Establishment of Plenipotentiaries for the protection of human rights in Police

The institution of Plenipotentiaries for the protection of human rights was established in the Police in 2004. Their basic tasks include: dissemination of knowledge and propagation of issues associated with the protection of human rights among policemen, monitoring all discriminatory events and initiating and coordinating anti-discrimination initiatives of the Police. An important part of the activities of Plenipotentiaries is the provision of in-house training designed to improve professional knowledge of policemen.

- Establishment of the Government Plenipotentiary for Equal Treatment at the Chancellery of the Prime Minister, in the rank of a Secretary of State

To increase the effectiveness of government institutions responsible for the protection against discrimination, the Council of Ministers passed a regulation of 22 April 2008 on appointing the Government Plenipotentiary for Equal Treatment at the Chancellery of the Prime Minister, in the level of a Secretary of State. The Plenipotentiary is responsible for the implementation of the government's policy in the area of equal treatment, i.e., inter alia, counteracting discrimination, especially discrimination based on sex, race, ethnic origin, nationality, religion or belief, political views, age, sexual orientation, civil and family status.

The tasks of the Plenipotentiary include:

- issuing opinions of legal solutions – the existing ones and those being drafted;
- analyzing and monitoring the situation with respect to equal treatment;
- initiating and coordinating activities intended to ensure equal treatment and protection against discrimination;
- promoting and raising awareness of issues of equal treatment.

The Plenipotentiary fulfils her tasks in cooperation with government bodies, as well as local and regional governments and nongovernmental organizations. The Plenipotentiary coordinates the *National Program for Counteracting Racial Discrimination, Xenophobia and Related Intolerance 2004-2009* and chairs the Program Monitoring Team, established under an order of the Prime Minister.

- Implementation of the National Program for Counteracting Racial Discrimination, Xenophobia and Related Intolerance 2004-2009

Since the National Program for Counteracting Racial Discrimination, Xenophobia and Related Intolerance 2004-2009 has been in force a number of institutional changes which have had an effect on the implementation of the Program have taken place. To ensure its proper implementation and assessment of the National Program for Counteracting Racial Discrimination, Xenophobia and Related Intolerance, also the Program Monitoring Team was set up in February 2009. It is a consultative-advisory body of the Prime Minister.

Within the National Program a number of effective measures have been taken to eradicate racism and xenophobia from social life, including:

- i. A curriculum framework for general education, which provides a basis for teaching in Polish schools, has been drawn up taking into account the development of tolerant attitudes among pupils; the aim of education is to strengthen the sense of affiliation with the community of Poland's citizens, to promote respect for the state, to foster tolerance and eradicate xenophobic attitudes; teaching curricula and textbooks authorized for school use are assessed in terms of their relevance for developing tolerant attitudes and promoting respect for the rights of national and ethnic minorities;
- ii. The National In-Service Teacher Training Centre, with the Minister of National Education as its governing authority, provides teacher training on issues associated with combating discrimination. It has also issued a number of publications on the above issues (such as: *Intercultural education. Teacher's guidebook* – 2004, *Anti-Discrimination. Educational Package* – 2005, *We Are Discovering the Humanitarian Law* – 2005, *Compass. Human Rights Education in the Work with Young People* – 2005, *Little Compass. Human Rights Education in the Work with Children* – 2009).
- iii. The problems of human rights, including discrimination issues, have been taken into account in training curricula for the Police, Border Guard, Customs Service, Prison Service and the army at all levels of education;
- iv. Educational materials for the Police, Border Guard, Customs Service and Prison Service have been developed and circulated. The above mentioned materials foster anti-racist attitudes and combat xenophobia;
- v. Training on tolerance and open society has been provided for representatives of government and local administration;
- vi. Trainings have been organized for judges and prosecutors. They involved carrying out analyses of court rulings in cases concerning crimes committed on racial, national or ethnic grounds;

- vii. Prosecutor's offices have exercised regular official supervision over cases involving racial crimes; statistical data on these cases covering the period from 2007 onwards, are available on the Internet, with earlier data being made available on request;
- viii. Two analyses have been carried out to monitor racial, xenophobic and anti-semitic contents in the Polish press;
- ix. A network of citizens' advice bureaus, commissioned by the government, has been set up to advise citizens on issues related to discrimination on the grounds of ethnic origin or nationality.

- The role and tasks of The National Prosecutor's Office

The National Prosecutor's Office is tasked with regular monitoring of cases of racially motivated crimes. Exercising its official supervisory functions, the Preliminary Proceedings Office of the National Prosecutor's Office orders analyses and controls of the decision taken in the course of preliminary proceedings, concluded with a refusal to initiate proceedings or a decision to discontinue them.

The prosecutor designated in the Office cooperates with employees of the earlier mentioned Monitoring Team on Racism and Xenophobia at the Ministry of Interior and Administration. When the Team obtains information on cases of hate crimes from any institution or organization, such information is forwarded to the Preliminary Proceeding Office, which examines the reported cases or has them examined by the Appellate Prosecutor's Offices. On its website, the National Prosecutor's Office publishes the results of proceedings related to this category of crimes. The information on the number of such crimes and the outcomes of prosecutors' work is thus made available to the public.

- Training program for Police

A training program is being implemented in the Polish Police entitled the *Law Enforcement Officers Program on Combating Hate Crimes (LEOP)* under the supervision of the Ministry of Interior and Administration.

- Program for the Roma Community in Poland

The Minister of Interior and Administration undertakes annual review of the *Program for the Roma Community in Poland* implementation. Five years of the program implementation gives basis for the claim that there is a gradual improvement in exercising the right to housing and employment as well as access to health service and social assistance.

21. Switzerland

21.1 Legislation prohibiting incitement to national, racial and religious hatred

The Swiss Federal Council does not plan to ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems, in the near future.

Art. 261bis on racial discrimination prohibits public incitement to hatred or discrimination against a person or a group of persons because of their race, ethnic origin or religion. The Article Prohibits the propagation of a racist ideology, the organisation or encouragement of defamatory acts of propaganda against a person or group of persons on account of their race, ethnic origin or religion and the fact of publicly disparaging or discriminating these persons or denying them, for the same reason, a public service. It also prohibits denial of a genocide or crime against humanity. A person committing these acts shall be punished with imprisonment of up to three years or a fine.

Source: ECRI Report on Switzerland, 2009, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/switzerland/CHE-CbC-IV-2009-032-ENG.pdf>

21.2 Legislation protecting freedom of speech

Other fundamental rights related to communication are: Art. 17 and Art. 93 Abs. 2 (freedom of radio and television), Art. 20 (academic freedom), Art. 21 (freedom of artistic expression), Art. 22 (freedom of assembly), Art. 23 (freedom of association), Art. 27 (freedom of advertising in connection with economic freedom), Art. 34 (guarantee of political rights and freedom to form an opinion and to give genuine expression to the will), Art. 33 (Right to petition), Art. 15 (freedom of speech under the freedom of religion and conscience), Art. 13 Abs. 1 (right to privacy in relation to mail and telecommunications).

21.3 Other information or observations in relation to the public discussion of both

On the one hand, a number of elected representatives and others have challenged the content and even the existence of Article 261bis, particularly in the name of freedom of expression, which they believe this provision endangers. In 2005 the UDC political party tabled a motion in Parliament requesting the repeal of Article 261bis of the Criminal Code. In 2007 the then Minister for Justice and Police, who belonged to the same party, organised a consultation on “the advisability of revising the anti-racism criminal provision”. A request for a referendum “in favour of freedom of expression – we shall not be muzzled” was launched in June 2007 to repeal the “criminal provision against racism”. It failed, with only 80,000 signatures by 7 February 2009, the deadline for obtaining the 100,000 signatures required to be able to hold a referendum. On the other hand, the Federal Commission against Racism, anti-racism experts and anti-racist NGOs have all opposed the idea of repealing or weakening the existing provision because this would be a definite step backwards in Switzerland’s efforts to combat racism. They are not simply in favour of maintaining the provision, but consider that it must be reinforced and supplemented. For example, the anti-racism experts support the long-standing proposals to extend the prohibition of racist acts to the fact of wearing racist symbols and setting up racist groups, but these proposals have not succeeded so far. The Swiss authorities have indicated that a proposal for a specific provision in the Criminal Code to ban the wearing of signs of a discriminatory attitude based on race and the public use of slogans, gestures or forms of salutation with a racist meaning, is currently under examination. However, the motion accepted by Parliament to add a ban on racist symbols to Article 261bis was made before its previous report was even published, and that the Federal Commission against Racism regrets that discussion of this motion is postponed each time. The proposal to prohibit the setting up of racist organisations has been rejected and is therefore no longer on Parliament’s agenda. In view of reports that there are instances of racist violence in Switzerland, particularly committed by persons belonging to neo-Nazi groups and other far-right movements, there is a need for appropriate criminal provisions enabling penalties to be duly imposed for ordinary offences committed with racist motives.

As regards the political discourse; there are very few far-right parties in Switzerland, with marginal political influence, especially at federal level, and with few, if any, elected members at local level. Some members of these parties have occasionally been prosecuted for their racist remarks or leaflets. But there have been changes in the tone of political discourse in Switzerland in the last few years. These changes are very closely linked to the growth of the UDC party (Union démocratique du centre / SVP Schweizerische Volkspartei). In the latest parliamentary elections at federal level, the UDC obtained the highest score: 29% of the votes. With 62 elected members of the National Council – the second chamber of parliament – (55 during the 2003 parliamentary term), the UDC now occupies a significant position in Swiss politics. This party has made “foreigners” its key issue. The programme, positions, campaigns, posters and other material produced by the party are described by all anti-racism experts as xenophobic and racist.

There have been many occasions in recent years on which the UDC has promoted intolerant images and remarks. There have been excessive and discriminatory generalisations on the basis of isolated cases, trivial news items or approximate, manipulated statistics. The main targets of these methods are foreigners, especially young foreigners, asylum seekers, Blacks, Muslims and Roma. Foreigners as a whole are accused of abusing social welfare benefits and being the main perpetrators of crime in Switzerland. In particular, young foreigners,

especially those from the Balkans, are accused of all forms of crime ranging from very minor to most serious offences, on the basis of occasional incidents relayed by the media. Asylum seekers are generally accused of not being real refugees and abusing the asylum procedure and social welfare benefits. Blacks are generally described as drug traffickers. Prejudice against Muslims is reflected in allegations that there is a risk of Switzerland being “swamped” by Islam, and Muslims are frequently categorised as fundamentalists or terrorists. More recently, Roma were also targeted by intolerant remarks during the campaign for the federal referendum on the extension of the free movement agreements with the European Union to Bulgaria and Romania. The UDC poster in favour of the “no” vote showed huge black crows tearing Switzerland to pieces above the words “Open the door to abuse? No!”. Racist discourse is not only reflected in the party’s remarks, but also in the images it uses to illustrate its views, particularly on posters and newspaper advertisements. For example, the drawing of white sheep chasing a black sheep from Switzerland served to illustrate the 2007 electoral campaign and justify the UDC’s position that all foreign criminals should be deported with their families. During campaigns on naturalisation issues, a poster appeared in the streets portraying Osama Bin Laden on a Swiss identity card, as well as another depicting dark hands grabbing Swiss passports.

To date, despite complaints to the prosecuting authorities against posters of this type, no criminal penalties have been imposed on those who produced them. As indicated in other parts of this report, the UDC has tabled motions in Parliament and launched requests for referenda threatening or even directly infringing the fundamental rights of foreigners. The UDC has also launched repeated attacks with a view to abolishing the anti-racist provisions of the criminal law and the Federal Commission against Racism. Although they are often rejected by Parliament and the population, these repeated attacks by UDC members against foreigners’ fundamental rights and against the prohibition of racism and xenophobia have created a deep sense of unease among minority communities and in Swiss society generally. In some cases, the party’s racist and xenophobic discourse has preceded some of its election and referendum victories, which indicates that anti-foreigner discourse has an impact on political choices. The representatives of human rights organisations and organisations upholding immigrants’ interests have expressed their serious concern, and the representatives of the minorities most frequently targeted have even expressed their fear that the situation may deteriorate further, with the risk of encouraging intolerance and violence against them by members of the majority community.

Although xenophobic pressure is generally felt recently to have diminished slightly particularly since the failure of the former UDC leader to be re-elected as a member of the Federal Government, the fundamentally anti-foreigner positions expressed at such a significant political level have served, in ECRI’s view, dangerously to polarise public debate. Against this background, the response of other political parties assumes particular importance. One is entitled to wonder how the other major political parties behave in response to this rhetoric. As indicated by a study commissioned by the Federal Commission against Racism on foreigners and ethnic minorities in the election campaign, analysing the media coverage (by the press and television) of the 2007 federal elections, the UDC’s openly xenophobic positions do not meet with indifference in political circles and the media. Many people condemn and combat them.

However, the study also shows that the response at a national level to these xenophobic tends to fall short of direct refutation. The tendency is rather to describe them as simplistic, exaggerated or electorally opportunist. The danger of such an approach in ECRI’s view is that it tends to validate the original remarks. As a result, there is now permanent talk of “the high crime rate among foreigners” or their “integration deficit”, without the ideas themselves being challenged by evidence to the contrary. Furthermore, as there are no real penalties for politicians who disseminate racist and xenophobic ideas, their views make headway in Swiss public opinion with serious effects on the atmosphere surrounding the target groups in Switzerland.

The above-mentioned study also shows that foreigners and ethnic minorities are very limited in the contribution they can make to these debates. With only a few exceptions at local level, non-citizens are not entitled to vote in Switzerland. The organisations upholding their rights do

not have enough support to make themselves heard effectively. In a situation in which increasingly restrictive measures are proposed with regard to almost 21% of the population in Switzerland, it is essential in ECRI's view that there should be an adequate outlet for the public expression of their concerns on these matters. However, the authorities have indicated that foreigners can be members of the Federal Commission against Racism and the Federal Commission for Migration Issues and that they make up 45% of the latter. The federal authorities regularly and openly oppose various parliamentary motions and requests for referenda launched or supported by the UDC, explaining that they infringe or are likely to infringe human rights, as in the case of the request for a referendum intended to ban the construction of minarets. The Swiss people themselves, although 29% voted for this party, reject some of its more extreme positions in referenda. The Federal Commission against Racism, the Federal Commission for Migration Issues and other bodies constantly warn the general public about this threat to the country's social cohesion.

There are active neo-Nazi and extreme right-wing groups in Switzerland. They regularly organise public meetings, including concerts at which Nazi songs are sung. It is hard to give exact figures, but as a whole, these groups number several hundred people. The far right is also represented to some extent among members of the army, although it is difficult to gauge the extent of this problem accurately. The Swiss authorities say that the situation regarding the presence of the far right in Switzerland has not changed much in recent years. Skinheads are apparently increasing in number and displaying more openly aggressive behaviour than before. Extremist movements are apparently also tending to become more politicised. They advocate a heightened form of nationalism hostile to foreigners and to their integration, particularly by demonstrating on 1 August, Switzerland's national day. The Federal Council's strategy to combat right-wing extremism is based on three key components: firstly, making use of the entire legal arsenal available; secondly, tolerating no violence, racial hatred or xenophobia in Switzerland; and thirdly, co-coordinating the preventive and punitive measures applied at national level by the Confederation, the cantons and the municipalities, and at international level. The authorities say that acts of racist violence are sometimes committed by young people belonging to far-right movements. They emphasize that the incidents inventoried often take the form of violent clashes between groups of right-wing extremists and groups of non-citizens, who are said to engage in mutual provocation at festivals or other public events. However, there are allegations of very violent attacks by groups against isolated individuals on the sole basis of their origin, but that the police and other competent authorities do not pay the requisite attention to these cases. According to the anti-racist NGOs, a number of victims do not report racist attacks for fear of reprisals and because they lack confidence in the police, and sometimes also because they are living illegally in Switzerland. It also appears that the police do not always take note of the racist aspect of an act of violence even when the victim or witnesses report it to them.

In recent years, some political parties, including the UDC, have considerably exploited and encouraged prejudice and racist stereotypes concerning Muslims within the majority population, not only in their rhetoric but also in political campaign posters. As a result some parts of public opinion may equate the entire Muslim population with terrorists and religious extremists. The fear of seeing Switzerland "swamped by Muslims" is also exploited. In some cases, this prejudice apparently leads to discrimination, notably in employment, since Muslims are refused jobs because of the suspicion surrounding them. In particular, women who wear the Islamic headscarf encounter difficulties of access to jobs, housing and goods and services for the public. Muslims are also vulnerable to discrimination in matters of naturalisation. To take but one example of hostility towards Muslims displayed in recent years, reference can be made to the federal popular initiative "against the construction of minarets", aimed at adopting through referendum a new provision in the Federal Constitution, whereby "the construction of minarets is forbidden". This initiative obtained the 100,000 signatures required and will therefore be submitted to the people and the cantons. It has, however, been deemed clearly incompatible with freedom of religion by the Federal Council, and hence in breach of the Swiss Constitution and international law as binding on Switzerland, and the Federal Council has called on the people and the cantons to reject it. The Federal Commission against Racism itself has stated that the initiative "defames Muslims and discriminates against them." However, it seems that, under Swiss law, only a popular

initiative to amend the Constitution which violated "mandatory international law" (jus cogens) would be invalid. The referendum on these new provisions was approved at the end of 2009.

Racial profiling by the police and by other authorities responsible for maintaining public order or controlling borders, including private security firms' staff present, inter alia, on public transport, specifically targets Black people. The latter complain in particular of the frequency of spot checks performed in the streets or on public transport and of the way in which these controls are carried out, which is sometimes humiliating especially where the person concerned is obliged to undress in the street. The manner in which Black persons are described by certain politicians in their discourse and by certain police officers has a far-reaching influence on the way in which they are perceived by members of the Swiss majority population, particularly public officials, resulting in cases of racial discrimination in access to employment, housing, public services, publicly available goods and services and also education, on account of the prejudice and stereotypes which Black persons encounter. Black persons are apparently also victims of verbal racist harassment on a routine basis, particularly in the street, and also sometimes of racially motivated physical assaults. Since a number of Black persons are also non-citizens, above all originating from states outside the EU/EFTA, asylum seekers and, sometimes, undocumented immigrants, they are at risk of being subjected to multiple discrimination, that is to say discrimination on more than one ground, such as skin colour, nationality, legal status and so on.

The image of asylum-seekers has deteriorated in political discourse, the media and public opinion, to the point where it is no longer rare for members of the majority population to equate asylum-seekers with fraud and drug dealing. As an example of the increasingly radical trend of public opinion regarding asylum seekers, mention can be made of a motion passed by the municipal council of Vallorbe in late 2007, the aim of which was to ban asylum-seekers living in the town's reception centre from the railway station. This motion was deemed unlawful, in particular on the ground that it was discriminatory since it concerned all asylum-seekers. It accordingly came to nothing but it reflects the climate of opinion, especially in municipalities where reception centres for asylum-seekers are located. ECRI notes the continued existence in Switzerland of expressions and acts of intolerance in respect of persons belonging to the Jewish community. The expressions of anti-semitism noted in recent years include revisionist arguments, anonymous flyers, letters to newspaper editors and, above all, on-line reactions to press articles published on the Internet. They are frequently voiced in connection with debates on the Middle East. Cases of vandalism against synagogues and graves or private property owned by Jews are also to be deplored. In some instances verbal and sometimes even physical attacks on individuals belonging to the Jewish religion have taken place in the street.

Source: ECRI Report on Switzerland, 2009, available at:

<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/switzerland/CHE-CbC-IV-2009-032-ENG.pdf>

21.4 Relevant jurisprudence on incitement to hatred and/or freedom of speech

Article 261bis is sometimes interpreted in a manner that does not allow effective action against racist acts. A review of case-law in recent years shows that prosecutions are regularly brought for the offences provided for in Article 261bis and that many courts apply Article 261bis appropriately and punish the authors of racist remarks, usually with monetary penalties but also, in the most serious cases, with prison sentences. Judgments rendered on appeal by the Federal Tribunal help to clarify given aspects of this article and to unify cantonal case law. It took a clear stance on what is to be understood by the term "public", since some of the acts listed in this article, such as incitement to racial hatred, are prohibited only if committed in public. In a judgment of 27 May 2004 (ATF 130 IV 111) the Federal Tribunal held that acts concerning the family circle, a circle of friends or particular personal relationships or relationships of trust are not considered public. In the case in question, it held that allegations made in a speech during a closed meeting, in a forest refuge, in front of 40 to 50 skinheads belonging to different small groups, were public.

However, some uncertainties and flaws remain in the interpretation of Article 261bis by the prosecuting authorities and the courts. This has made the use of the criminal law in combating racism less effective. In some cases, courts interpret racist insults as infringing the dignity of the persons targeted and punish them, whereas others acquit the authors of very similar remarks on the grounds that there is no infringement of human dignity. In order for Article 261bis to apply, persons must be targeted “on account of their race, ethnic origin or religion”. Some prosecuting authorities and courts interpret the concept of ethnicity in such a way as to make the provision meaningless. For example, in the case where a person banned “former Yugoslavs” and “Albanians” from his restaurant, the judge held that while the Albanians constituted an ethnic group, such was not the case of “former Yugoslavs”, since Yugoslavia precisely comprised several ethnic groups. In another case, the authorities did not prosecute over a refusal to allow “nationals of the Balkans” to enter a discotheque, on the grounds that this was not contrary to Article 261bis because “nationals of the Balkans cannot be classified in a religious group or race and do not meet the definition of an ethnic group either”.

In order for the criminal prohibition of racist acts to be effective, it must concern racist remarks or acts targeting a person or group of persons for reasons that are real but also assumed or even mistakenly perceived by the perpetrator, such as race, colour, language, religion, nationality and national or ethnic origin. In some cases the courts interpret Article 261bis along these lines, since they have already rightly applied it to remarks levelled at groups such as “foreigners” or “asylum seekers” which cannot in the strict sense be regarded as sharing the same racial or ethnic origin or the same religion. A further problem is that as the law and the courts’ interpretation of the law currently stand, it is virtually impossible for an anti-racist association or one representing the interests of a group targeted by racist remarks to bring a complaint and take part in the proceedings to put across its point of view. In ECRI’s view, these gaps in the application of the criminal provisions against racism should be filled in order to make them fully efficient. A study of the case law shows that it is perfectly possible to interpret Article 261bis in such a way as to fill some of the gaps noted above and that it is necessary to harmonise and optimise the manner in which it is interpreted by the prosecuting authorities and the courts.

Source: ECRI Report on Switzerland, 2009, available at:
<http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/switzerland/CHE-CbC-IV-2009-032-ENG.pdf>

22. Tajikistan

22.1 Legislation prohibiting incitement to national, racial and religious hatred

There is no definition of discrimination in the Tajik national legislation. The prohibition of discrimination on the grounds of race, language and faith is stipulated in many Tajik laws and regulations, among them the Criminal, Civil, Labour and Family Codes, the Citizenship Act, Migration Act, Employment Promotion Act, Religion and Religious Organizations Act, Foreign Nationals (Legal Status) Act and the Forced Migrants Act.

Article 30 of the Constitution bans propaganda and agitation that arouse social, racial, religious and linguistic enmity and hatred.

Article 17 of the Constitution stipulates that everyone is equal before the law and the courts. The State shall guarantee individual rights and freedoms irrespective of nationality, race, sex, language, faith, political beliefs, education, or social or material status.

Under article 2, paragraph 3, of the Constitution, all nationalities and minorities living on the territory of the Republic are entitled to use their mother tongues without restriction.

Article 5 of the Constitution reads: “The human being and human rights and freedoms are paramount. Life, honour, dignity and other natural human rights are inviolable. The rights and freedoms of the individual and the citizen shall be recognized, observed and protected by the State.”

According to article 18 of the Constitution: “Everyone has the right to life. No one’s life may be taken except by judicial sentence for an especially serious crime. The inviolability of the person shall be guaranteed by the State. No one may be subjected to torture, cruelty or

inhuman treatment. Compulsory medical and scientific experiments on humans are prohibited.”

According to article 16 of the Constitution of the Republic of Tajikistan: “Tajik citizens abroad shall be under the protection of the State. No citizen of the Republic may be extradited to a foreign State. The extradition of a criminal to a foreign State on the basis of a bilateral agreement shall be permitted. “Foreign citizens and stateless persons shall enjoy the stated rights and freedoms and shall have the same rights and responsibility as citizens of Tajikistan, except in those cases specified by law. “Tajikistan may offer political asylum to foreign citizens who are the victims of human rights violations.”

Section VII of the Criminal Code (Crimes against the person) lays down penalties for the following crimes:

- (a) Crimes against life and health;
- (b) Crimes against personal freedom, honour and dignity;
- (c) Crimes against sexual freedom or sexual inviolability;
- (d) Crimes against the constitutional rights and freedoms of the individual and the citizen;
- (e) Crimes against the family and minors.

Under 2004 amendments to the Criminal code, articles 105 (Murder), 110 and 111 (Physical Assault), 117 (Istyzanie)¹ contain provision with regard to nation, racial, religious, parochial hatred or blood feud.

Article 143 under Chapter 19 of the Criminal Code, which covers offences against the constitutional rights and freedoms of the individual and the citizen prohibits violation of equality of citizens on the grounds of sex, race, nationality, language, social origin, personal, material or official status, place of residence, attitude to religion, beliefs, or membership of a political party or voluntary association that damages the rights and legitimate interests of the individual

Article 189 on national, racial, parochial and religious enmity penalizes actions aimed at stimulation national, racial, parochial and religious enmity, humiliation of national dignity, as well as propaganda of oneness of citizens on the ground of their religion, nationality, face or parochial membership.

23. Ukraine

23.1 Legislation prohibiting incitement to national, racial and religious hatred

In 2009 there were several legislative developments and initiatives to amend national legislation, among them the following:

- On 5 November, the Parliament of Ukraine amended the Criminal Code of Ukraine (on responsibility for crimes because of racial, national or religious intolerance). The amendment envisages 10-15 years of imprisonment for a premeditated murder because of racial, national or religious intolerance. In addition the Amendment provides for fine or 5-year imprisonment for deliberate acts aimed at fueling national, racial or religious hatred, humiliating dignity of people related to their religion, race, ethnic origin, skin or language.
- On 1 December, President of Ukraine Viktor Yushchenko promulgated the Law №1707-VI “On amendments to Criminal Code of Ukraine on responsibility for crimes, committed on the ground of racial, national or religious intolerance”, which was approved by the Parliament on 5 November 2009. Full text of the Law available at <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=1707-17>.
- On 20 October, two MPs from the Party of Regions submitted to the Parliament a Draft Law (5247) on prevention and counteraction of Nazism and fascism

¹ In the note to article 117 of the Criminal Code, torture is described as “causing physical or moral suffering for a purpose of forcing a person to confess or to do other actions against his will, or for a purpose of punishment or other”.

propaganda in Ukraine. Text of the draft and supporting documents available at http://gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=36351

23.2 Other information or observations in relation to the public discussion of both

In 2009 a number of senior government officials in Ukraine (including the President, Head of Security Service of Ukraine, Ombudsman etc) have raised the issue of xenophobia in their public statements stressing necessity to address the problem. However, despite these efforts, the overall culture of denial still prevailed among the government officials and no adequate resources have been allocated to implement declared plans.

The inter-agency working group led by the State Committee for Nationalities and Religions (SCNR) conducted meetings and approved its terms of reference and action plan. However, the group lacked adequate resources and authority to effect any real change, apart of declarative statements and meetings. Therefore, in the view of UNHCR, the activities of the working group had very little impact on the situation. For example, the working group received requests to evaluate materials for hate speech but SCNR has no mandate to provide such expertise. In addition, SCNR could only issue recommendations to other Ministries and the Prosecutor General, which were not legally binding.

The National Commission on public morale, National TV and radio council, 7 TV channels and production studios of Ukraine signed a charter (public agreement) aimed at regulating broadcasting *inter alia* avoiding propaganda of xenophobia and racism. The charter is not legally binding and entails no legal obligations, thus the overall quality of media coverage has not significantly changed. Cases of distorted reporting and hate speech still occurred.

The Ministry of Interior of Ukraine adopted a plan to promote human rights and address hate crimes. Law-response to radical youth groups and education of the police staff were identified as priorities. Quarterly and annual reports are available at www.mvs.gov.ua. The Ministry's Department for human rights monitoring has undertaken several awareness raising initiatives, incl. publication of brochures and lectures for the police staff.

Ukrainian law enforcement agencies continuously lacked expertise to investigate hate crimes. UNHCR encouraged the Government of Ukraine to take advantage of training opportunities, such as the OSCE's Law Enforcement Officer Program on Combating Hate Crimes. However, the signing of the Law Enforcement Officer Program has been delayed and postponed.

Very little has been done by the government in terms of reaching out to the affected communities to increase the confidence of victims to report crimes to the police. Instead the racial profiling, arbitrary detention, money extortion, intimidation and police harassment of asylum seekers and refugees remained widespread.

The following initiatives and developments caused concern of UNHCR in 2009:

- **Hate speech during the presidential campaign.** During 2009, UNHCR noticed the increasing number of public actions, marches and campaigns against migration and foreigners, organized by some political parties and radical groups. For example, in November-December 2009 political party "Svoboda" (Freedom), led by one of the candidates who run for President's post Oleg Tyagnybok, launched a campaign against illegal migration "Save the nation, stop migration". The campaign with motto "Migrants bring exotic diseases, stranger culture and unemployment" further fuelled hate speech and xenophobic attitudes. Demonstrations took place in Kyiv, Chernihiv and other 10 regions of Ukraine.
- **Activities of Patriot Ukrainy.** UNHCR and IOM several times drew attention of the law enforcement agencies to activities of Patriot Ukrainy, incl. dissemination of hate speech materials in and recruitment of youth in downtown in Kharkiv and Kyiv, however no official response was received and Patriot Ukrainy reportedly continued its activities. Patriot Ukrainy conducted a number of demonstrations throughout the country under slogans "Ukraine for Ukrainians!" and "Death to our enemies!"

- **Crackdown on youth groups.** In the attempt to ensure law-enforcement response to hate crimes, the Ministry of Interior reportedly detained and registered some young people who could be “considered dangerous or a threat” (without proper investigation, by arbitrary choice).
- **Response to the flu outbreak.** In November Ukraine was hit by the outbreak of seasonal flu combined with H1N1. The government took strict measures to prevent and control spreading of the infection. Some initiatives of the Ministry of Interior at provincial level (in Western Ukrainian Zakarpattia region for example) were unacceptable. The local population was asked through announcements to report about each and every encounter with foreigners from the Middle East and South East Asia to the police hotline as they pose a threat. The UN Resident Coordinator and UNHCR intervened with the Ministry of Interior and the practice was stopped.
- **Concept on national and patriotic upbringing of youth in Ukraine caused concerns of human rights organizations.** The Concept was adopted by a joint resolution of four Ministries. Human rights organizations expressed their concerns noting that the programme has the undesirable nationalistic flavour and does not touch upon diversity promotion and inter-ethnic tolerance education issues

Examples of attacks and manifestation of xenophobia and racism

In 2009, physical assaults and attacks on migrants, refugees and asylum seekers, foreign students, Roma, and people of non-Slavic appearance persisted in Ukraine. Though difficult to judge in the absence of reliable statistics and a comprehensive monitoring system, some experts believe that the situation regarding hate crimes improved in 2009. The law-enforcement response, first cases of prosecution and convictions of perpetrators coupled with changes in behavioral patterns of the affected communities and their limited to minimum social interaction with the local population resulted in an overall decrease of reports of attacks. At the same time UNHCR continued to receive worrying reports from persons of concern and NGO partners. Below are just a few examples:

- In April, the office of the Chernihiv Civic Committee for the Protection of Human Rights was daubed with graffiti and images of an anti-semitic and xenophobic nature. The incident was reported to the police but UNHCR is not aware about the outcome of the investigation.
- In September, a group of unknown young people left Nazi symbols on the main entrance door to the NGO HIAS office in Kyiv. According to the HIAS duty guard who responded to a disturbance outside the door, the group consisted of three young males, aged 17-18, with closely cropped hair wearing sports clothing. HIAS Kyiv filed a formal complaint about the incident with local police. The use of the sign has not been officially banned in Ukraine.
- In January 2009, Chernihiv Civic Committee for the Protection of Human Rights has reported about the attack against a recognised refugee of Chechen origin residing in Chernihiv. The refugee received a knife wound in kidneys and was hospitalized. The attack took place on the 1 January in Chernihiv during the meeting on the occasion of the 100th anniversary of Stepan Bandera’s birth. The event was arranged by Chernihiv nationalists, including representatives of such xenophobic movements as “Ukrainian alternative” and “Patriot of Ukraine”. The mother of the refugee insisted on racial motivation of the attack, caused by the “non-Slavic appearance” of her son. The law enforcement agencies confirmed the fact of the attack but denied any racial grounds and therefore registered it as hooliganism. UNHCR is not aware about the results of the investigation, except that a local inhabitant was arrested on suspicion of committing the attack.
- Racial profiling and police harassment remained widespread in Ukraine. During 2009 UNHCR received testimonies from asylum seekers such as the following: “two uniformed officers approached me near the “Lisoviy” market in Kyiv. As I had no ID, police took me to a police station and held there in detention for the next three days. Later I was taken to the court and fined UAH 340 UAH for illegal stay in Ukraine. My golden ring, UAH 2200 in cash, and a Nokia mobile phone were not returned upon my release”.

- The Uzbek asylum seeker informed UNHCR that in January he was attacked by several young men at Borshegovkaya district of Kyiv. The asylum seeker claimed that he approached police station at Svyatoshenskyi district in order to submit a complain about the attack, however his application was not registered and accepted.
- Another asylum seeker from Pakistan (18 years old) approached UNHCR through an NGO partner in July. He reported that he was assaulted by 8-10 unknown young men. The assailants attacked him near the Chernigiv'ska metro station in Kyiv and beat him into unconsciousness. The attackers then stole UAH 200 and his documents. As a result of the attack the victim sustained serious injuries and was hospitalized. UNHCR provided legal and medical assistance in this case.
- A recognized refugee (female) from Congo informed UNHCR that in October near Lybidska metro station in Kyiv, in day light, she was hit in the face by a young man. She fell down, but people around did not make any efforts to help her.
- Other incidents involving persons of concern to UNHCR included beatings, blows to heads and bodies, knife wounds. Most of them happened in public places in day time in the presence of other people. Perpetrators were usually described as a group of young people. In some cases victims approached police but received no assistance.

23.3 Relevant policies in relation to incitement to hatred and/or freedom of speech

On 6 February 2009, the Ministry of Interior and the Office of Prosecutor General issued a joint instruction (No. 11/121) for law enforcement personnel to begin registration of crimes committed on the basis of racial, ethnic or religious intolerance. Civil society and the international community commended the Government of Ukraine for this step and recommended to implement and build on this initiative to put a reliable data collection system in place. If fully implemented, this instruction would be an important step to combat hate crimes that have been on the rise in Ukraine since 2005.

Albeit a very promising move, UNHCR is not aware if the instruction has been fully implemented and can mention only monitoring efforts by civil society and Diversity Initiative whose coverage has been limited mainly to Kyiv. While media monitoring, NGOs and affected communities are useful sources of information, consistent and comprehensive official monitoring is essential to ensure proper investigation and law enforcement response. In the absence of the data collection system, the combined statistics on "crimes committed by foreigners" and "crimes committed against" foreigners, was maintained by the Ministry of Interior in 2009. The lack of official statistics made the identification of emerging trends, hotspots and development of strategies for prevention, protection and response impossible. It is generally recognized that there were many incidents throughout the country that went unreported and/or undocumented. Unless incidents were really serious, resulted in severe wounds or death, asylum seekers and refugees refrained to approach police, even supported by NGO partners. The level of confidence in law-enforcement and judiciary in Ukraine is extremely low. Refugees and asylum seekers are hesitant to report to the police because of fear of retribution and lack of trust.

Recent developments in the area of counteraction of xenophobia and racism in Ukraine

Due to the active position taken by Amnesty International (AI), IOM, the UN Resident Coordinator and UNHCR as well as the intensive lobbying efforts, a positive momentum in addressing the issue with the government has been gained, in particular:

- Ministry of Interior pledged its utmost support to counter-xenophobia projects and invited organizations interested in addressing xenophobia to contribute to the complex action plan to be soon adopted by the Minister. Instructions to strengthen focus on prevention of racial attacks have been given by the Minister and Deputy Minister to all heads of the Mol departments in the regions. For the first time the Minister has acknowledged the problem in public and told media about the decision to establish special legal units dealing with racial crimes. In April-May 2007 UNHCR and its partners have already noted some positive results of the strong position taken by the Mol, namely prevention of neo-Nazi marches devoted to the SS-Halychyna in various cities of Ukraine and arrests of four suspects (on the case of beating of an Egyptian diplomat and a racially motivated incident in the Arena night club in Kyiv).

- On 26 April 2007 the Minister of Education made a public statement acknowledging racial incidents targeting foreign students, condemning racial violence and calling for urgent action. UNHCR and IOM have invited the Ministry to join the counter-xenophobia working group (see below) and designate a focal point dealing with this issue.

List of governmental steps to address xenophobia and racism in Ukraine

On **22 March 2007**, in accordance with Protocol 6, the decision #8 of the MOI Civil Human Rights Council was taken to create a group working on counteraction against racism and xenophobia in Ukrainian society consisting of Mr. Fathutdinov (MFA), Ms. Taranovska (AI), Mr. Martynenko (MOI), Mr. Belousov and charge them with elaboration of a forward-looking plan together with the Ministry's chairpersons.

On **30 March 2007**, the Minister of Interior made a high profile public statement with regard to the issue of addressing xenophobia and racism in Ukraine during the meeting with the Embassies and representations of international organizations in Ukraine.

On **27 April 2007**, Ministry of education and science of Ukraine made an official statement (by the minister Nikolaenko) which condemned xenophobia and racial violence against foreign students studying in Ukraine (who are the largest group of the reported victims).

MOI developed the Plan of Action aimed at addressing xenophobia for the period until 2009, approved on **31 May 2007**.

On **9 August 2007**, MOI meeting with the IOM, UNHCR and Amnesty International took place on discussion of possible cooperation within the developed Plan of Action aimed at addressing xenophobia for the period until 2009, approved on 31 May 2007.

In MOI letter to AI of **1 October 2007**, the Ministry declared that it started developing a "Comprehensive programme for combating racism in Ukraine".

On **24 October 2007**, in accordance with the order of the President, SBU set up special unit on counteraction against xenophobia and national intolerance.

On **12 November 2007**, the State Security Service (SBU) held a meeting with SCNR, MFA, MOI, Prosecutor General, NGOs and IOM (on behalf of the diversity initiative network) to discuss Government-NGO coordination on tolerance/xenophobia.

On **13 November 2007**, the Foreign Affairs Ministry introduced the post of special envoy for combating racism, xenophobia, and discrimination. H.E Mr. Oleksandr Horin, has been appointed to this post and will coordinate the Foreign Affairs Ministry's interactions with other agencies in cases of religious or ethnic conflicts. The envoy will combat and prevent such manifestations

On **29 November 2007**, a meeting took place between Acting Minister of Interior Kornienko a group of Ambassadors and IOM (on behalf of UNHCR) to discuss MOI efforts to deal with xenophobia and hate crimes.

On **4 December 2007**, SBU held a meeting with a number of NGOs and IOM (on behalf of the diversity initiative network) to further discuss Government-civil society coordination on tolerance/xenophobia, it was decided to hold such meetings quarterly.

On **10 December 2007**, the Memorandum of Understanding was signed between the UN system in Ukraine and the Ombudsman of Ukraine. In her statement, Mrs. Karpachova said that from this date the cooperation between UN and Ombudsman become more systematic. According to her, the priority areas of cooperation are - ratification of Convention on the Rights of Persons with Disabilities and protecting rights of migrants and refugees, raising awareness on the rights of HIV-positive people and orphans, and also put more efforts to prevent racism and xenophobia.

On **11 January 2008**, Mr. Gennadiy Moskal, MP, member of the fraction "Our Ukraine- People Self-defence", 1st deputy Head of the Rada Committee on counteraction against organized criminality announced on the press-conference that he drafted legislation that empowers responsibility for manifestations of anti-semitism and racial intolerance.

On **21 January 2008**, President Viktor Yuschenko suggests that the Verkhovna Rada should toughen criminal responsibility for infringing on equality of the rights of citizens depending on their race, nationality or religion. Ukrainian News learned this from the presidential press service. According to the report, Yuschenko submitted a bill amending Article 161 of the Criminal Code. The bill envisages tougher punishment for infringing on equality of human rights. During its consideration at a parliament meeting, the bill will be presented by

President's Secretariat Deputy Chief/ President's Commissioner for Security Service Control Ihor Pukshyn.

On 1 February 2008, the Committee of the Verkhovna Rada of Ukraine on human rights, national minorities and interethnic relations made a statement about the increasing tendency of attacks on representatives of other nations. According to him, law enforcement agencies should hold impartial investigation; bring responsible persons to justice and "it is necessary to find out whether the murder was racially motivated". Mr. Sharov emphasized that the Committee will constantly monitor implementation of the legislation on observance of human rights irrespective of race, nationality and religion.

On 4 February 2008, Minister of Justice Onischuk's made a statement that racist violence is not a trend, but only a number of separate incidents.

On 8 February, MP Feldman registered a draft Law on amendments to some laws of Ukraine (about responsibility for public support and propaganda of Nazi ideas and other discrimination ideologies). According to the amendments it is foreseen to sanction the production, distribution and demonstration of "attributes symbolic, printed or audio materials about Nazism and similar ideologies" etc. through a fine.

11 March 2008, SCNR website - SCNR is going to establish several Expert councils. In particular it is planned to establish Expert Council on Counteraction Xenophobia, Racial Discrimination and Intolerance and Civil Council on Ensuring Implementation of Ukrainian Refugee Legislation. Terms of reference of the expert councils will be elaborated till the end of March 2008. All concerned ministries, departments and civil organizations could be engaged in councils' activities.

On 20 March 2008, Head of the Parliament Committee on human rights, national minorities and interethnic relations, Mr. Ihor Sharov approached Prime-Minister Yulia Tymoshenko with the letter, in which he expressed concern "about xenophobia moods on grassroot level in Ukraine". He made reference to statistics of the Congress of national communities of Ukraine about 70 attacks in 2007.

According to the report of **24 March**, Zhytomir state administration with financial support of the US embassy in Ukraine will hold several events (round-tables, public hearings) aimed on counteraction xenophobia and promoting tolerance.

On 26 March 2008, Head of SCNR Mr. Sagan gave an interview on xenophobia on radio Era. According to his words, recently the issue of xenophobia and racial discrimination has a great civil resonance not only within the country but also abroad.

On 27 March 2008, draft law about amendments to some Laws of Ukraine (about making more severe responsibility for inflaming political, ideological, racial, national and religious hate was registered under # 2281 and submitted by MP of Party of Regions, Ms. Anna German.

On 2 April 2008, MOI organized a press-conference on counteraction of racist manifestation in Ukraine with participation of the Ministry of Foreign Affairs, SBU, SCNR, and the Ministry for Youth, Family and Sport, State Institute for Family and Youth Development, the Eastern European Development Institute and La strada Ukraine.

The programme explaining the issues of racism and xenophobia is planned to be implemented in Ukraine. It was announced within the meeting of the Ukrainian experts with experts of Consultative Committee of the Framework convention on protection of national minorities' rights which took place **on 9 April 2008** in the Ministry of Justice (MinJust). The results of this visit will be summarized in the report in June 2008. Council of Europe experts were informed about joint agreement of MinJust, MOI and SCNR to implement in Ukraine educational project on xenophobia and racism. This project will include several components. In particular - workshops for Ukrainian judges on the legal definition of racism.

On 10-11 April, there was a visit of delegation of the American Jewish Committee headed by its Executive Director, Mr. David Harris. The delegation held several meeting with Prime-Minister of Ukraine, Executive Head of SBU, the First Deputy of the Minister of MFA and Deputy Head of the Presidential Secretariat. Among other issues xenophobia and anti-semitism were discussed.

On 13 April 2008, the Minister of Interior Yury Lutsenko met with ambassadors from member states of the European Union to discuss issues on countering xenophobia and racism.

On 14 April 2008, after the official visit to Egypt, April 9-10, President Viktor Yushchenko wrote letters to the Prosecutor General Oleksander Medvedko and to Internal Minister Yuriy Lutsenko drawing their attention to increasing number of cases of xenophobia, racial and national intolerance reported by national mass media.

On 17 April 2008, Ms Tymoshenko after her speech to the Council of Europe Parliamentary Assembly had to go into several other issues in response to questions from Assembly Members:

- In response to Mr. GROSS (Switzerland), who inquired into recent acts of racism and anti-semitism, she stated that these were isolated accidents: During her recent meeting with the Council of Religious Leaders, none of them had expressed concern about such events;
- In response to Mr. MIRZAZADA (Azerbaijan) who inquired into the Ukrainian Government's policy on the rights of ethnic minorities, she stated that Ukraine aspired to the protection of rights of minorities and that there was no evidence of discrimination. She underlined that all Ukrainian nationalities are represented in Parliament, which she considered to be a positive feature and one which she would like to maintain and even extend in the future;
- To Mr. Branger's (France) inquiry into the conditions of migrants and asylum seekers in Ukraine she did not respond.

On 17 April 2008, 1st meeting of the Inter-ministerial working group on xenophobia were held by the Head of SCNR, Mr. Sagan.

A Ukrainian delegation including Head of SCNR Mr. Sagan, representatives from MOI, GPO and SBU participated in additional seminar of OSCE in Vienna **on 28-30 May 2008**.

The State Committee for Affairs of Nationalities and Religions has moved forward with an initiative to draft a national program to fight racism and xenophobia in Ukraine. Committee First Deputy Chairman Serhii Buhai announced this at a briefing **on 3 June 2008**. On June 2, the second meeting of the interdepartmental ad hoc team for fight against xenophobia, racial and ethnic intolerance passed a decision to create a national program to fight racism and xenophobia in Ukraine within the implementation of recommendations of the Council of Europe, he said. The first step toward the creation of the program will be the creation of a comprehensive plan of actions to fight racism and xenophobia. He said the interdepartmental ad hoc team was intending to recommend the Verkhovna Rada to introduce a number of amendments to the legislation regulating the fight against racism and xenophobia.

12 June 2008, in a Kyiv meeting of the Council on Ethnic Policy under the President of Ukraine took place in the Presidential Secretariat. Representatives of different ministries and departments and also experts, leaders of minority communities participated. Among other issues, 3rd ECRI report was discussed which led to negotiations regarding countering xenophobia from government side.

25 July 2008, the Minister of Interior held a press conference, calling on the Government to focus more on 'fighting' xenophobia and racial intolerance. He emphasized the importance of adopting a comprehensive policy on preventing racism and xenophobia. Mr. Lutsenko said that it is 'necessary for the Cabinet of Ministers to adopt, as quickly as possible, a comprehensive program on minimization of xenophobia and racial intolerance in Ukraine'. He encouraged all 'foreigners' who suffered from hate crimes to report all such incidents to the police.

25 July 2008, Nina Karpacheva, Ukraine's Ombudsman is being quoted as saying that five Chinese nationals were brutally attacked/stabbed by a group of 'unkown' assailants. One of the victims is in a coma. Following this issue, Nina Karpacheva appeals to Kyiv city state administration and Kyiv city Council to join the European Coalition of Cities Against Racism (ECCAR).

24. United Kingdom

24.1 Legislation prohibiting incitement to national, racial and religious hatred

New criminal law provisions regarding incitement to hatred have been adopted (the Racial and Religious Hatred Act 2006). This act extends to England and Wales only and creates offences involving stirring up hatred against persons on religious grounds. Religious hatred is defined as "hatred against a group of persons defined by reference to religious belief or lack of religious belief". In contrast with the equivalent provisions covering racial hatred, which cover both acts intended and acts that are likely to stir up racial hatred, the provisions governing religious hatred cover only acts intended to stir up such hatred; similarly, whereas the provisions with respect to racial hatred prohibit not only threatening but also abusive and insulting words or behaviour, those governing religious hatred are limited to threatening words or behaviour. A freedom of expression defence specific to the new religious hatred offences is also provided for, meaning that the provisions governing offences based on religious hatred

cannot be used to prohibit or restrict discussion, criticism or expressions of antipathy, dislike, ridicule or abuse of particular religions or belief systems, or the beliefs or practices of their adherents. The common law offences of blasphemy and blasphemous libel have been abolished.

The Crime and Disorder Act 1998 defines certain specific racially or religiously aggravated offences which are prohibited in England and Wales, namely racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc. Such offences are considered to be racially or religiously aggravated if, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates hostility towards the victim based on his or her membership or presumed membership of a racial or religious group, or if the offence is wholly or partly motivated by hostility towards members of a racial or religious group based on their membership of that group.

In addition, section 145 of the Criminal Justice Act 2003 applies in cases where a court is considering the seriousness of an offence other than the above offences. In these cases, if the offence was racially or religiously aggravated, the court must treat that fact as an aggravating factor, and must state in court that the offence was so aggravated. Definitions of race-hate crime have been made broader: it is now "any criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person's race or perceived race". A racist incident is "any non-crime incident which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person's race or perceived race".

In Scotland the court is also required to take racial or religious aggravation into account on conviction, thanks to section 96(5) Crime and Disorder Act 1998 (which only applies to Scotland) and section 74 of the Criminal Justice (Scotland) Act 2003. Incitement to religious hatred has been prohibited in Northern Ireland since 1987 under Part III of the Public Order (Northern Ireland) Order 1987, which outlaws certain acts intended to likely to arouse fear of or stir up hatred against a group of persons defined by reference to religious belief, colour, nationality (including citizenship) or ethnic or national origins. With regard to civil legislation, an Equality Bill was under debate in 2009. In Northern Ireland, section 75 of the Northern Ireland Act 1998 (the equality clause) includes religious belief and racial group. Since 2007 in GB, one body deals with all equality issues: the Equality and Human Rights Commission.

Source: ECRI Report on the United Kingdom, 2010, available at:
http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/United_Kingdom/GBR-CbC-IV-2010-004-ENG.pdf

II. Africa

1. Ghana

1.1 Legislation prohibiting incitement to national, racial and religious hatred

Article 17(1) and (2) and Article 21(c) the Constitution of the Republic of Ghana, 1992, make provision for equality of all persons before the law, and non discrimination on grounds of inter alia race and religion, and the law also provides for freedom of religion and to manifest such practice.

The Avoidance of Discrimination Act, 1957 Ghana, also prohibits organisations using or engaging in tribal, regional, racial or religious propaganda to the detriment of any other community. Community includes any body or group of persons, having a common tribal or racial origin or because of their birth or upbringing in any Region, locality or place whether in Ghana or any country, associating together in Ghana.

Article 33(5) of the Constitution of Ghana makes room for the State's adherence to the rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms

not mentioned in the Constitution but which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.

1.2 Legislation protecting freedom of speech

In 1992 a new Constitution established the fourth Republic of Ghana and, with accompanying legal reform, there began a process of significant liberalisation within the media and in the field of freedom of expression. Article 21(1) (a) of the 1992 Constitution of the Republic of Ghana states that all persons shall have the right to freedom of speech and expression.

2. Guinea Bissau

2.1 Legislation protecting freedom of speech

The Constitution of Guinea - Bissau, in force since 1993, guarantees 'fundamental human rights and freedoms' and forbids the death penalty. According to the Constitution, all constitutional and legal proceedings related to fundamental human rights must be interpreted in harmony with the Universal Declaration of Human Rights. The Constitution further defines the Defence and Security Forces as non - partisan, whose mission is the defence of country's sovereignty and territorial integrity, and forbids them from interfering in political life. Guinea - Bissau has ratified some international human rights treaties, but has yet to ratify several others that it has already signed. Furthermore, it has yet to enact legislation to reflect in national law the provisions of the international treaties to which it is a party.

Source: *Amnesty International: Guinea Bissau Submission to the UN Universal Periodic Review*, Eighth session of the UPR Working Group of the Human Rights Council, May 2010.

3. Guinea Conakry

3.1 Legislation prohibiting incitement to national, racial and religious hatred

The Guinean law (Penal Code, Art 136 & 139) forbids any act qualified as racism, religionism, or even all propaganda with racial, tribal or subversive character. Punishment: 1 to 10 years imprisonment, including prosecutions for material or moral loss.

4. Mali

4.1 Legislation prohibiting incitement to national, racial and religious hatred

The legislation in force in Mali on the prohibition of incitement of racial or religious hatred and respect for freedom of expression, is contained in the Constitution (la Loi Fondamentale). Thus the 1992 Constitution gives primacy to the human person in the first place under whose preamble states that Mali's solemn commitment to defend the republican and secular state, proclaims its determination to defend human Women and children as well as cultural and linguistic diversity of the national community.

The 1992 Constitution establishes a clear separation between the executive, legislative and judicial, and prohibits any discrimination based on race, race, color or religion in its article 2. Mali has always condemned racial segregation and apartheid. Discrimination is criminalized in the Penal Code by section 179, which punishes one to six years imprisonment and a fine of 20,000 francs those who, during a sports competition or a performance cultural, incited the audience to hatred or violence, racism or xenophobia

III. Asia Pacific

1. Australia

1.1 Legislation prohibiting incitement to national, racial and religious hatred

Australia has established laws at the Federal and State/Territory levels to combat racism, racial discrimination, xenophobia and related intolerance. Federal legislation includes the Racial Discrimination Act 1975, Racial Hatred Act 1995, and Australian Human Rights Commission Act 1986.

The Racial Discrimination Act 1975 (RDA) protects individuals across Australia from discrimination on the grounds of race, colour, descent, or national or ethnic origin. In 1995 the RDA was extended to make racial vilification against the law. The RDA gives effect to Australia's obligations under the 1965 International Convention on the Elimination of Racial Discrimination (CERD), which the Government of Australia ratified in September 1975. Pursuant to the RDA, individuals can lodge complaints of racial discrimination and racial vilification with the Australian Human Rights Commission (AHRC). The Race Discrimination Commissioner works to increase community awareness of and compliance with the federal laws. The Commissioner provides submissions to Parliamentary and other inquiries, gives speeches and develops policy advice on key issues. The Commissioner may also be invited to provide assistance in matters before the Federal Court and the Federal Magistrates Service relating to racial discrimination.

The Racial Hatred Act 1995 (RHA) extends the coverage of the RDA so that people can complain to the AHRC about racially offensive or abusive behavior. It aims to strike a balance between the right to communicate freely and the right to live free from vilification. The RHA covers public acts which are done, in whole or in part, because of the race, colour, or national or ethnic origin of a person or group; and reasonably likely in all the circumstances to offend, insult, humiliate or intimidate that person or group.

The Australian Human Rights Commission Act 1986 (formerly called the Human Rights and Equal Opportunity Commission Act 1986) established the Human Rights and Equal Opportunity Commission (now named the Australian Human Rights Commission, AHRC). In addition, the Aboriginal and Torres Strait Islander Social Justice Commissioner has specific functions under the AHRC Act and the Native Title Act 1993 to monitor the human rights of Indigenous people. The AHRC is an independent statutory organization which reports to the Federal Parliament through the Attorney-General.

In accordance with the Act, the AHRC's responsibilities include education and public awareness, discrimination and human rights complaints, human rights compliance, policy and legislative development. Activities include resolving complaints of discrimination or breaches of human rights under federal laws, holding public inquiries into human rights issues of national importance, developing human rights education programs and resources for schools, workplaces and the community, providing independent legal advice to assist courts in cases that involve human rights principles, providing advice and submissions to parliaments and governments to develop laws, policies and programs, and undertaking and coordinating research into human rights and discrimination issues.

On 21 June 2007, the Australian Government announced a national emergency response to protect Aboriginal children in the Northern Territory from sexual abuse and family violence. This has become known as the "NT intervention" or the "Emergency Response". The catalyst for the measures was the release of Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse. In the following months the emergency announcements were developed and formalized into a package of federal legislation which was enacted on 17 August 2007. The legislation has the effect of suspending the application of the RDA in the Northern Territory, with the consequence that individuals affected by the intervention measures have no right to bring a complaint under the RDA.

2. Indonesia

2.1 Legislation prohibiting incitement to national, racial and religious hatred

The freedom of religion is guaranteed by the Indonesian Constitution of 1945, Article 28 (e). Indonesia also ratified the International Covenant on Civil and Political Rights in 2006 where States are to respect the right to freedom of religion. The Government is however only officially recognizing six religions: Islam, Catholicism, Protestantism, Buddhism, Hinduism and Confucianism. The Joint Ministerial in 2008 banned the proselytizing by the Ahmadiya group but allowed the group to worship and continue their practice within their own community.

3. Malaysia

3.1 Legislation prohibiting incitement to national, racial and religious hatred

The most supreme law of Malaysia is the Federal Constitution of Malaysia which is a written law.

Article 8 of the Federal Constitution by clause (1) provides that all persons are equal before the law and entitled to its equal protection.

Clause 2 states: "... there shall be no discrimination against citizens on the ground only of religion, race, descent, gender or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment."

Therefore, all statutory legislation billed by the parliament must be in pursuant and in support of article 8 of the Federal Constitution above.

Article 10 of the Constitution of Malaysia guarantees the freedom of speech, the right to assemble peacefully and the right to form associations to every Malaysian citizen. However, Parliament may by law impose restrictions on these rights in the interest of the security of the Federation which includes prohibiting incitement to national, racial or religious hatred, friendly relations with other countries, public order, morality; and restrictions designed to protect the privileges of Parliament, to provide against contempt of court, defamation, or incitement to any offence.

Several acts of law regulate the freedoms granted by Article 10, such as the Sedition Act 1948 makes it an offence to engage in acts with a "seditious tendency" which is in line with prohibiting incitement to national, racial or religious hatred while ensuring respect of the freedom of expression, including but not limited to the spoken word and publications; conviction may result in a sentence of a fine up to RM5,000, three years in jail, or both.

3.2 Relevant policies in relation to incitement to hatred and/or freedom of speech

1. The formation of the National Civics Bureau (BTN)

The National Civics Bureau is a government agency that was originally started in 1974 established under the program known as Youth and Youth Research Unit, Ministry of Culture, Youth and Sports to conduct National Development Program activities. On 6 September 1999, BTN headquarters moved to Federal Government Administrative Centre Putrajaya. BTN has several camps to be used as a place to perform the activities of the National Development Program. In 1981, in accordance with the decision of the Government, the function of BTN has been expanded to foster patriotism and love of country among all levels of society, including youth, students, government employees and private sector. This would encourage togetherness amongst multi racial Malaysians to curb race and religion relations issues and strengthen the love to the country through the National Development Program activities held in the camps by the National Civics Bureau.

Later in November 1986, BTN clarified and expanded activities to train leaders and potential leaders so that they support development efforts in several areas such as religious, social, political, economic and educational.

National Development Program goal is to nurture the love of the country through activities in camps set up by the bureau. The trainees in the camps are recruited randomly amongst civil servants and by applications from private bodies. The trainees themselves are Malaysians who are of multi racial and religion. The attendance of such participants encourages tolerance and this in turn prohibits incitement to national, racial or religious hatred as the basis of which the program is working on is to improve people's commitment to the nation's vision and efforts towards excellence in the country despite being Malay, Chinese or Indian professing multi religion.

This prepares the people to be the basis of the country's policies towards the development and the well being of the nation. At the same time, this builds commitment to the people of Malaysia against the duties and responsibilities to achieve excellence and perfection of trust and responsibility through respect in each other. In all, the activities build a spirit of patriotism and loyalty to the country and the high national struggle in spite of Malaysia being multi racial and religious Country. This can be done by instilling respect towards each other coming from different creed in the process of developing Malaysia.

Construction of a developed country by the National Development Program involves:

1. Changes in attitudes, personality development and appreciation of the excellent multi cultural and religious-based value system.
2. People's awareness and consciousness about the need to change attitudes through the inculcation of an appreciation and moral values and the exposure and move towards self-centred 'personality changes as the basis for achieving excellence in the nation despite Malaysia being a multi racial and religious country.
3. Appreciation of the value based on the awareness of God, living together, and awareness of the pervasive obligation to the self, family, organizations, communities and countries.

2. The National Service Programme.

The ministers in 2002 approved the establishment of the Cabinet Committee on **National Service** which was chaired by the Minister of Defence. The targeted group for this programme are teenagers born in 1986 or those 18 years of age in 2004. The goal of National Service is to become the ultimate department to produce Malaysian Nations. Malaysian Nations happens when "we do not evaluate someone by his skin color, race or religion," as per the Prime Minister. The National Service Programme is a complimentary to National Civics Bureau programme when the former targets high school leavers just before entering tertiary education level. The programme initially was planned to curb high school leavers being idle pending their O level result to be deliberated and being admitted to tertiary education. It goes without saying that the target group comes from multi racial/ethnic/religious background picked randomly by the National Service Bureau. The main goals of this programme are:

1. To groom teenagers with strong sense of identity developing them into individuals having a sense of patriotism and love for the nation.
2. To realize the nation's dream of achieving national integration and unity among its peoples. To mould teenagers into having positive personalities through the implanting of honorable values through the National Service Training Programme.
3. The formation of the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism

Established in 1983, it is dedicated to the promotion of goodwill, harmony and unity amongst all Malaysians irrespective of creed, religion, race, culture or gender. Round-table dialogue is its principal and preferred means to resolve potential conflicts arising from differences in a plural society.

Aims

- (a) To promote understanding, mutual respect and co-operation between people of different religions.
- (b) To study and resolve problems affecting all inter religious relationships.
- (c) To make representations regarding religious matters when necessary.
- (d) To advance and promote the religious, cultural, educational and social rights and interests of the religious bodies.

Objectives

- (a) To uphold and promote the ideas as enunciated in the Nation Philosophy.
- (b) To promote unity, harmony and understanding amongst people of different religions through conferences, seminars and other channels.
- (c) To print, publish and distribute journals, periodicals, leaflets or books that the Executive Committee may consider desirable for the promotion of its objects, with the proviso that, prior approval must be obtained from the competent authority.

4. The formation of the Malaysia Interfaith Network

MIN structure is like an umbrella that links and embraces all those institutions and individuals working to protect, promote and support interfaith dialogues and understanding and joint action.

MIN working methods are guided by the following five principles:

MIN respects the independence and autonomy of the participating groups and individuals.

MIN seeks to reinforce not replace existing formal and informal structures.

MIN fosters the development of a strong local state and national groups and networks.

MIN facilitates consultation and consensus in its work.

MIN ensures respect for "Unity in Diversity"

The Vision of the Malaysian Interfaith Network (MIN) consists primarily of three issues:

- to proactively promote DIALOGUE between faith organizations in Malaysia
- to foster better UNDERSTANDING of common concerns and values and areas of contention.
- to organize specific ACTIONS, sharing information, service and advocacy.

Source: <http://www.malaysianinterfaithnetwork.net/>

5. The setting up of Rukun Negara/ National Principles

The Rukun Negara was introduced following the bloody May 13, 1969 racial riots.

It was proclaimed by the Yang di-Pertuan Agong [The Head of the Nation] at the launch of the Merdeka [Independence] Day celebrations in 1970.

The incident proved at that time that Malaysian racial balance and stability was fragile at best. Immediately thereafter, the Malaysian government sought ways to foster unity among Malaysians.

It is the Malaysian declaration of national philosophy, the contents of which are as follows:

WHEREAS OUR COUNTRY, MALAYSIA nurtures the ambitions of:

- achieving a more perfect unity amongst the whole of her society;
- preserving a democratic way of life;
- creating a just society where the prosperity of the country can be enjoyed together in a fair and equitable manner;
- guaranteeing a liberal approach towards her rich and varied cultural traditions; and
- building a progressive society that will make use of science and modern technology.

NOW, THEREFORE WE, the people of Malaysia, pledge to concentrate the whole of our energy and efforts to achieve these ambitions based on the following principles:

BELIEF IN GOD
LOYALTY TO KING AND COUNTRY
THE SUPREMACY OF THE CONSTITUTION
THE RULE OF LAW
COURTESY AND MORALITY

It is a norm for primary and secondary public schools in Malaysia to recite the pledge weekly during a compulsory assembly. Pledge reading follows immediately after the singing of the Malaysian national anthem, Negaraku. Of some interest, the Rukun Negara could usually be found behind the cover of every exercise book that is typically used by primary and secondary Malaysian public school students. This is primarily a move recognized to have been formulated to emulate the similar tactic introduced by the Singapore government immediately after her departure from the Malaysian Federation in 1965. In September 2010 aggressive campaigns will be held nationwide to revive efforts to uphold the tenets of the Rukun Negara.

Information, Communication and Culture Minister Datuk Seri Dr Rais Yatim said the move was aimed at strengthening people's understanding on the philosophy which is in line with the "1Malaysia" concept (see below).

He said it would include infusing cultural music performance, theatre, education and cultural programme and talks on Rukun Negara philosophy.

6. The Department of National Unity & Integration

This department is set up and aimed to become a leading government agency in producing a united, far-sighted and progressive Malaysian Race by instilling tolerance and racial harmony through social interaction and networking towards a united Malaysian Race with a national identity.

The department is responsible:

1. To draft, coordinate and implement policies that can reinforce national unity and integration;
2. To plan, coordinate and implement programmes / activities that can instill and reinforce national unity and integration besides enhancing patriotism amongst the multi-racial population of this country;
3. To provide guidance by inculcating good values and unity amongst children aged between 5 and 6 through pre-school education at unity kindergartens;
4. To provide training programmes for department staff and officers, neighbourhood watch committee members and unity kindergarten teachers in the effort to enhance levels of efficiency and skills;
5. To conduct ongoing and scientific research on national unity and integration;
6. To monitor the climate of national unity and integration through social relations identification;
7. To increase publicity and promote unity and integration at state and national levels via print and electronic media;
8. To strengthen networks with government agencies, private sectors, non-governmental organizations, higher learning institutes and international organizations.

This is the ultimate government agency in Malaysia which deals directly with issues relating to race, religion, and ethnicities in Malaysia and has the specific role of prohibiting incitement to national, racial or religious hatred amongst Malaysians through its programmes.

Its main programme is the National Integration Action Plan which is a four year plan from 2006 till 2010. The main goal of this plan is to strengthen the unity process and national integration amongst the multi racial Malaysians. Its implementations are amongst others done through talks, seminars, forum, round table discussions, task force to curb racial issues, social impact assessment done by the government to Malaysian societies, celebrations of Malaysian festivals, film screening on Malaysian cultures, multi racial and cultural food fiesta, more literary publications on multi racial Malaysians, more societal activities like having a "My

Neighbour, My Family” campaign, more cultural oriented programmes in our education system etc.

7. University Course on Ethnic Relations

Ethnic relations including sensitivities involving racial clashes is academically and openly discussed in colleges and universities since 2006.

The component, aimed at improving multi-ethnic understanding, has not only been made compulsory as part of the Malaysian Studies subject for the 600,000 students but they must also pass the paper to qualify for certificates, diplomas or degrees, said the National Accreditation Board.

Foreign students are also obliged to attend all classes as a pre-requisite to graduate. However, it is not compulsory for them to pass the subject.

The thrust of the curriculum is to broaden the minds of Muslim students who are inward looking and of non-Muslims who have an unfounded fear of Islam, and eventually, mould Malaysians into “towering personalities”.

It would be an exercise of learning and unlearning in a plural society. The aim is to eliminate stereotyping or preconceived notions that the various races have of each other. Ethnic studies will be a good opportunity and a forum for students to raise questions and seek answers with a clearer frame of mind.

9. Introduction of “1 Malaysia” Concept

“1Malaysia” or “One Malaysia” (Malay: Satu Malaysia) is a Malaysian idea introduced by the sixth Malaysian Prime Minister, Najib Tun Razak on 5 April 2009. The main motto is People First; Performance Now (Rakyat Didahulukan, Pencapaian Diutamakan). “1Malaysia” concept according to YAB Dato’ Sri Mohd Najib Tun Abdul Razak explanation: “We stand, we think and act as a Malaysia race. And we take actions based on the needs of all ethnic groups in our country; (“Kita berdiri, kita berfikir dan bertindak sebagai bangsa Malaysia. Dan kita mengambil tindakan-tindakan berdasarkan kehendak semua kumpulan etnik dalam negara kita). While “1Malaysia” does not seek to do away with Article 153 of the Malaysian Constitution it does place a strong emphasis on protecting the rights and welfare of non-Malays. This means that “1Malaysia” still doesn’t provide an equal right for all citizens as per 1960’s Malaysian Malaysia associated to Mr. Lee Kuan Yew which later then became the prime minister the Republic of Singapore. “1Malaysia” concept is to harmonise citizens of the country disregard of race without changing its racial identity.

Integration under “1Malaysia” is different from assimilation concept where the identity of various races were wiped out and replaced by a common national identity. Instead “1Malaysia” appreciate and respect principals of Federal Constitution and ethnic identity of various races in Malaysia, and consider it as an asset or an advantage that can be proud of. 1Malaysia stressed an acceptance attitude within multi-racial citizens society, where a race/ethnic accept the racial differences of others in order for all to live together by respecting each other as a citizen in one country.

4. New Zealand

4.1 Legislation prohibiting incitement to national, racial and religious hatred

In New Zealand there are two main pieces of law that specifically promote and protect human rights: the Human Rights Act 1993, and the New Zealand Bill of Rights Act 1990.

The Human Rights Act sets out the primary functions of the Human Rights Commission (HRC). These are to advocate and promote respect for and appreciation of human rights in New Zealand society; and to encourage the maintenance and development of harmonious relations between individuals and the diverse groups in New Zealand society. Specifically, s 21 of the New Zealand Human Rights Act prohibits discrimination for reasons including political opinion (or no political opinion), religious belief (or no religion), colour, race, ethnic or national origins, sex, or sexual orientation. It also makes illegal racial harassment, and exciting hostility against or bringing into contempt any group of persons in, or who may be coming to, New Zealand on the grounds of colour, race, or ethnic or national origins of the

group. However, of significant note is the fact that the Human Rights Act excludes all immigration laws, policies and administrative practices from its ambit (because they are inherently discriminatory). Although a review commissioned by the New Zealand Government in 2000 recommended the amendment of this provision, the exclusion remains.

The Commission also has the power to resolve disputes relating to unlawful discrimination. The Act's intention is to help ensure that all people in New Zealand are treated fairly and equally. In March, the Commission publishes a report that surveys general developments in race relations over the previous year, collates key data, analyses complaints and provides an overview of race relations research (Please see attached the HRC Report on Race Relations in 2009).

The New Zealand Bill of Rights Act sets out a range of civil and political rights, which arise from the 1966 International Covenant on Civil and Political Rights. The Act includes, among other things, the right to freedom of expression, the right to religious belief, and the right to freedom of movement, and the right to be free from discrimination, and medical experimentation.

The New Zealand Bill of Rights Act requires the Government and anyone carrying out a public function to observe these rights, and to justify any limits placed on them. Complaints about breaches of these rights are privately funded and proceed through the courts.

5. Philippines

5.1 Legislation prohibiting incitement to national, racial and religious hatred

In the Philippines, the right to religion is protected by the Constitution, Sec. 5, Art.III.

Of particular importance are the two aspects of freedom of religious profession and worship, namely: (1) The right to believe which is absolute; and (2) the right to act which is subject to State regulation upon the application of clear and present danger rule.²

The Philippine Constitution also safeguards freedom of expression under Section 4, Article III. Valid government interference is ruled by certain parameters in accordance with the following tests:

(1) Clear and present Danger Rule - where the words are used in such circumstances and of such a nature as to create a clear and present danger that they will bring about the substantive evils that the State has the right to prevent;³

(2) Dangerous Tendency Rule – if the words uttered create a dangerous tendency of an evil which the State has the right to prevent, then such words are punishable⁴; and

(3) Balancing of Interests Test – Courts must take conscious and detailed consideration of the interplay of interests observable in a given situation.⁵

6. Thailand

6.1 Legislation prohibiting incitement to national, racial and religious hatred

Thailand has a comprehensive legal framework in place to combat national, racial or religious hatred. Instruments such as the Constitution of the Kingdom of Thailand 2007, Amendment to Penal Code 2007, Criminal Procedural Law 2007 and 2008, Child Protection Act 2003, Domestic Violence Victim Protection Act 2007, Anti-trafficking in Persons Act 2008 and Alien Occupation Act 2008, provide special protection to vulnerable groups.

² Nachura, Antonio. Outline/Reviewer in Political Law. Manila, 2006.

³ Ibid.

⁴ Cabansag v. Fernandez, 102 Phil 152

⁵ Zaldivar v. Sanduganbayan, 170 SCRA 1

In addition, nationality and civic registration legislation ensure the registration of birth of all children, including children of persons with non-registered status. In 2005 the Thai Cabinet expanded education and budget to education for children whose parents have non-registered status. This is in accordance with the national strategy to manage problems in relation to access to rights for immigrants, displaced persons and uprooted persons. In 2007, a National Human Rights Commission, Administrative Court, Office of the Ombudsman and Election Committee were established to protect and promote human rights. Individuals can lodge complaints concerning human rights abuses to the National Human Rights Commission.

On 19 April 2010, the Constitution Court of Indonesia ruled that the Blasphemy Law is a lawful restriction of minority religious beliefs as it maintains public order. The Blasphemy Law (Article 156a of the Indonesian Criminal code) is based on the 1965 government regulations which declared that Islam, Catholicism, Protestantism, Buddhism and Hinduism were official religions. Confucianism was also added in the list in 1998

The plea to review the Religious Blasphemy Law (Law No. 1/PNPS/1965 concerning Prevention of Abuse and/or Blasphemy) was filed in October 2009 by various Human Rights entities. The review requested an elimination of four articles in the law, which was deemed to be in violation of the State Constitution's right to freedom of religion and belief as they were discriminative against followers of traditional religious beliefs and religious minorities.

Although not in favor of elimination of the four contested provisions, the Court agreed with the views of several witnesses on the need to revise the law and did recommend in its ruling that such revision should be carried out through a legislative process at the House of Representatives (DPR).

There has also been an increase of enforced local sharia laws in many different parts of Indonesia, such as Aceh, South Sulawesi, West Java and West Sumatra. These laws are among others enforcing Islamic dress, prohibiting alcohol, display of public affection, banning suspicious behaviour and at times imposing public canning punishments.

IV. MENA

1. Algeria

1.1 **Legislation prohibiting incitement to national, racial and religious hatred**

Article 132 of the Constitution reads : « les traités ratifiés par le Président de la République, dans les conditions prévues par la Constitution, sont supérieurs à la loi ».

The Constitutional Counsel argued in one of his most important decision in 1989:

(...) Considérant qu'après sa ratification et dès sa publication, toute convention s'intègre dans le droit national et en application de l'article 123 de la constitution, acquiert une autorité supérieure à celle des lois, autorisant tout citoyen algérien de s'en prévaloir devant les juridictions, que tel est le cas notamment des pactes des Nations Unies de 1966 approuvés par la loi 89-08 du 25 avril 1989 et auxquels l'Algérie a adhéré par décret présidentiel n°89-67 du 16 mai 1989, ainsi que la Charte africaine des droits de l'homme et des peuples ratifiée par décret n°87-37 du 3 février 1987, ces instruments juridiques interdisant solennellement les discriminations de tous ordres ;(...)

This decision has two major implications; namely that an international convention has higher authority than national law and that any citizen can refer to the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights during judicial procedure.

Certain provisions in the criminal code restrict the freedom of speech. Articles 144 bis 1) and 144 bis 2), for example, are frequently used to justify the prosecution of journalists.

The 1990 Information Code contains provisions guaranteeing the freedom of speech and its protection, but it also contains certain articles that prohibit this freedom, such as Art. 77: « Quiconque offense par écrit, sons, images, dessins ou tous autres moyens directs ou indirects, l'islam et les autres religions célestes est puni d'un emprisonnement de six (6) mois

à trois (3) ans et d'une amende de 10.000 à 50.000 DA ou de l'une des deux peines seulement. »

Ordinance 06-03 (28/02/2006) and Decree n°7-135 (19/05/2007) also restrict the freedom of religion. These restrictions concern the right to organize religious meeting for the communities beside the Islamic community and furthermore, article 11 of Ordinance 06-03 provides a criminal sanction for anyone who by speech or writing, or in any other way encourages or incites the conversion of a Muslim to another religion, or who fabricates, produces, distributes or stores any document or audiovisual media or any support used to “shake the faith of a Muslim” (Art.11).

Finally, this legislation also restrains the right to organize religious meetings.