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**UNITED NATIONS HUMAN RIGHTS COUNCIL**

**6th session of the Forum on Minorities Issues**

Item 2 : Legal Framework and Key Concepts

Statement

by

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On behalf of the Council of Europe

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## **The European Commission against Racism and Intolerance (ECRI)**

ECRI is a regional human rights monitoring mechanism entrusted with the task of combating racism, racial discrimination, xenophobia, antisemitism and intolerance “in greater Europe” from the perspective of the protection of human rights. In so far as racism and discrimination based on religion is concerned, ECRI’s mandate refers specifically to antisemitism. Furthermore, it has consistently interpreted the concepts of racism, racial discrimination and intolerance as covering violent crime, hate speech, discrimination and intolerance against all religious groups. According to ECRI’s General Policy Recommendation No. 7, religion is one of the grounds upon which racism and racial discrimination should be prohibited by national legislations.

Two out of ECRI’s 14 General Policy Recommendations (guidelines addressed to governments of member States), specifically concern religious minorities: ECRI’s General Policy Recommendation No. 5 deals with intolerance and discrimination against Muslims and recommends, among others, the governments take measures to ensure that freedom of religious practice is fully guaranteed, to eliminate any manifestations of discrimination on grounds of religious belief in access to education, to employment and in the workplace and to ensure that religious instruction in schools respects cultural pluralism.

ECRI’s General Policy Recommendation No. 9 deals with the fight against anti-Semitism, recommending that Governments of member States give a high priority to the fight against antisemitism and enact legislation to penalise antisemitic crimes such as the public denial, trivialisation, justification or condoning of the Holocaust and the desecration and profanation of Jewish property and monuments. ECRI reiterates the recommendation made in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination for racist motivation to constitute an aggravating circumstance.

In its country reports also, ECRI stresses the importance of the application and development of criminal law provisions and countering racism in public discourse<sup>1</sup>. The public dissemination or public distribution, production or storage aimed at public dissemination or public distribution of written, pictorial or other anti-Semitic material should be criminalised as well.<sup>2</sup>

Where ECRI identifies instances of religious intolerance in its country reports, it makes recommendations to the Governments concerned on how those problems could be resolved, so that the right to freedom of thought, conscience and religion under Article 9 of the ECHR is respected. National legal provisions concerning freedom of conscience and religion that are discriminatory should be repealed<sup>3</sup> and practice in the field of religious education should also be in line with the requirements of the European Convention on Human Rights.<sup>4</sup>

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<sup>1</sup> See ECRI’s report on Hungary, § 74.

<sup>2</sup> See ECRI’s report on Denmark, § 97 and ECRI’s report on Serbia, § 125.

<sup>3</sup> In its report on Armenia (§ 93), ECRI recommended that the Bill amending the law on freedom of conscience and religious organisations be definitively withdrawn. In its report on Moldova (§ 151), ECRI recommended that the authorities repeal the discriminatory provisions contained in Article 19 (1) d of the Law on freedom of conscience, thought and religion and Article 54 (4) of the Code of Administrative Offences.

<sup>4</sup> See ECRI’s report on Turkey (§ 104).

## **Framework Convention for the Protection of National Minorities (FCNM) and freedom of religion**

According to Article 8 of FCNM states have to recognise the right of persons belonging to national minorities to manifest religion or belief. This provision may imply for States certain positive obligations to protect the freedoms mentioned against violations which do not necessary emanate from the State itself but from other groups.

The inclusion of a specific right to manifestation of religion among the substantive provisions of FCNM highlights the essential role that the profession of religion plays in preserving a minority group's identity and tradition.

The monitoring of the implementation of Article 8 by the Advisory Committee has highlighted that states should take steps to ensure that persons belonging to national minorities are able to observe and practice their religion without discrimination and on an equal footing with others residing in the state.

In certain cases, the Advisory Committee has required the adoption of comprehensive legislation providing protection against religious discrimination and has called for the prohibition of advocacy of religious hatred and incitement to religious intolerance. It also has required specific measures to promote tolerance and understanding in the fields of education, culture and media. The Advisory Committee has paid particular attention to the question of registration of religious associations as well as the issue of restitution of religious property confiscated.

Actually, the scope of the provision of Article 8 is even broad and include not only the right to manifest one's religion and belief, but also to establish and maintain religious institutions, to practise one's religion, including the acquisition, possession, uses of religions materials, to conduct religious education and activities as religious ceremonies in minority language.

This right is ensured by the FCNM, but also to some extent be the European Charter for Regional or Minority Languages (ECRML).

### **The ECRML as potentially useful support in the protection of religious minorities.**

The ECRML does not mention the religious minorities specifically, but being the unique international convention protecting minority languages, it creates when appropriate necessary basis for protection and promotion of such an important element of personal, and when it coincide religious identity, which is language. It is to be specified that this convention is applicable only to the minority languages traditionally used in a country, and clearly not cover the languages of migrants. This treaty is open for ratification by the states which are not member of the Council of Europe.