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Joint Statement of the European Roma Rights Center (ERRC) and the International Helsinki Federation for Human Rights (IHF) to the OSCE Conference on Discrimination, Racism and Xenophobia, Vienna, 4-5 September 2003

Governments in Europe Are Failing to Uphold Their Commitments to Fight Racism and Discrimination

As of September 2003, the deadline for the transposition of the EU Race Equality Directive (Council of the European Union directive 2000/43/EC) by EU Member States passed two months ago. However, not a single Member State has yet succeeded in transposing all provisions of the Directive into their national law. Regarding the lack of political will on the part of most Member States to change their national legislation in accordance with the Directive, Commissioner Anna Diamantopoulou stated:

“I am dismayed that most Member States have failed to integrate the Racial Equality Directive into national law. Let us not forget that this Directive was agreed unanimously by the Council three years ago.”

The *ERRC* and the *IHF* are deeply concerned that in many countries such as **Austria, Greece, Portugal and Spain**, where protection against racial discrimination has been traditionally weak and ineffective, national authorities failed to proceed with amending legislation as required by the terms of the Race Equality Directive. We welcome positive developments towards integration of the Race Equality Directive’s provisions in national law in some countries such as **Belgium, Italy and the United Kingdom**, and note that some of these countries have developed, even prior to the adoption of the Race Equality Directive, anti-discrimination law and policy reflecting some or most of the Directive’s requirements. In Central and Eastern Europe, only a few countries have so far indicated a serious intention to meet the Directive’s requirements. **Bulgaria** and **Hungary**, for example, have produced draft laws, which are pending before their parliaments.

In 2002, the **Bulgarian** government, in extensive consultation with civil society, prepared and submitted to Parliament a comprehensive anti-discrimination bill, transposing all EC anti-discrimination and gender equality *acquis* and going, in more than one aspect, beyond EU law. The bill further complied with ECRI’s General Policy Recommendation No 7 on National Legislation to Combat Racism and Racial Discrimination. However, in May 2003, a group of ruling majority MPs deposited a framework anti-discrimination bill, which was not prepared in consultation with civil society and turned out to be much weaker in the protection and safeguards afforded to victims. As of late August, the two draft bills had been consolidated into one but it had not yet been voted on by the parliament. Despite being a compromise, the draft

law, if adopted in its present form, will constitute an important step forward and is one of the relatively advanced anti-discrimination laws in Europe.

In **Slovakia**, legislative efforts are seriously impeded by a lack of political will amongst members of the Slovak cabinet. The Slovak anti-discrimination bill has already been rejected by parliament once, and the new bill is still not scheduled for review. A number of other countries have given no indication whatsoever that they intend to comply with the Race Equality Directive. The single government amongst the European Union candidate countries to have managed thus far to adopt any anti-discrimination law is **Romania**. The law, however, crucially differs from the Race Equality Directive, failing to meet, *inter alia*, the Directive's requirements for the reversal of the burden of proof and the ban on indirect discrimination.

Effective remedy for racially motivated crime and racially based discrimination remains an unfulfilled promise in many European countries. In addition to the inadequate civil and administrative procedures for fighting racial discrimination, the criminal prosecution of racially motivated violence also poses serious problems in the way of combating hate crimes. To name just one recent example from the country in which this meeting is being held, **Austrian** courts to date failed to entirely provide legal remedy to a Romani woman named V.J., who in April 1996 was arbitrarily detained by Vienna riot police, physically abused and insulted on racial grounds.

In criminal law, while all European states have ratified international human rights treaties committing states parties to prohibit acts of and incitement to racially motivated violence, many countries provide only a general prohibition of such acts. Although there is indisputable evidence of crimes committed with racial animus, few countries have made racial motivation an aggravating circumstance and introduced enhanced sentencing for racially motivated crime. The *ERRC* and the *IHF* are particularly concerned that the criminal legislation in countries such as **Belgium, Bulgaria, Croatia, Denmark, Germany, Greece, the Netherlands, Romania and Turkey**, where incidence of racially motivated crime is high, does not stipulate enhanced sentencing.

In some countries where sentencing enhancement for racially motivated crimes has been introduced, the respective provisions are rarely applied.

The **Swedish** Penal Code provides that courts can hand down stricter punishments if they consider that a crime was committed with the intent to violate a person or group of persons on the basis of race, skin colour, national or ethnical origin, religious creed, sexual orientation or other similar circumstances. However, the courts are not obliged to expressly state in their judgments if they applied this particular rule. As a result, it is virtually impossible to ascertain whether the provision has been applied. Swedish anti-discrimination legislation also remains inadequate in that its provisions fail to cover all areas of discrimination, and Sweden has failed thus far to ratify the 12th Protocol to the European Convention on Human Rights which once ratified by ten Member States of the Council of Europe will provide a ban on discrimination in the exercise of any right secured by law, significantly expanding existing protections available under the European Convention. While hate speech is criminalised, in cases concerning traditional mass media (newspapers, radio programs and some use of the Internet) the prosecution is to be handled by the chancellor of justice. In practice, very

few cases have led to prosecution, and there were only two convictions for hate speech in established media in 2002-2003.

In **Finland**, anti-discrimination legislation is formally comprehensive and covers all ethnic and religious grounds, penalising a wide variety of ethnic agitation and discrimination. In practice, however, a number of studies have indicated that the Finnish criminal justice system has not been able to deal properly with the problem of racially motivated crimes. The most common target for these types of crimes have been Roma or immigrants of African and Russian origin. Statistics indicate that a very small minority of racist crimes actually ever reach the courts. In addition, the dismissal rate for such cases is much higher than in other criminal cases.

Ongoing *ERRC* monitoring in **Slovakia** indicates that in Romani communities where skinhead violence is a known problem, authorities have failed to prevent deadly racially motivated violence against Roma perpetrated by members and sympathizers of nationalist-extremist movements or other vigilante groups. Moreover, Slovak authorities frequently fail to adequately punish both state and non-state actors who engage in racially motivated killings of Roma or to award adequate damages to the families of the victims.¹

Similarly, in the **Czech Republic**, Criminal Code provisions on sentencing enhancements for racially motivated crimes are not applied rigorously, especially where the victims are Romani. Speaking recently on the occasion of his appointment to head of the Czech Constitutional Court, Mr Pavel Rychetsky told the Czech daily *Pravo* that the Czech criminal justice system “does not function adequately when racially motivated violent crime is at issue”.

In countries throughout the OSCE region, criteria according to which crimes are investigated to determine if racial animus has played a role are often not clearly elaborated and/or not made public. Fragmentary statements by police officers in some countries such as **Czech Republic, Hungary** and **Slovakia** give rise to the concern that authorities apply overly strict guidelines when assessing a crime to determine whether it was racially motivated. For example, in some cases, officials have decided that a case is not racially motivated unless witnesses have heard the alleged perpetrator making explicitly racist remarks, even where other evidence points clearly to racist motive. In other cases, such as in the killing in Hungary of a Romani youth named Kristian Mohacsi in 1999, officials appear to have taken a "deny first and investigate later" approach to the issue of racial animus.

The *ERRC* and the *IHF* would like to reiterate the commitments of the OSCE Members States voiced at the Istanbul Summit in 1999 regarding the fight against racism and discrimination. The Istanbul Summit Declaration stated:

We also support the adoption and full implementation of comprehensive anti-discrimination legislation to promote full equality of opportunities for all. [...] We deplore violence and other manifestations of racism and discrimination against minorities,

¹ See information available on the *ERRC* Internet website at: <http://www.errc.org/publications/indices/slovakia.shtml>

including the Roma and Sinti. We commit ourselves to ensure that laws and policies fully respect the rights of Roma and Sinti and, where necessary, to promote anti-discrimination legislation to this effect.²

Considering these commitments, as well as the commitments made by the OSCE Member States under international and European law, the *ERRC* and the *IHF* call on the governments to:

- Take actions to transpose the Race Equality Directive and the other EU anti-discrimination directives without delay;
- Involve relevant beneficiaries – racial and other minorities in the drafting of the anti-discrimination legislation;
- Review criminal legislation and introduce the racial motive as an aggravating circumstance punished by stiffer sentences;
- Elaborate and make public the criteria according to which crimes are investigated to determine if they have been perpetrated on grounds of racial animus; and
- Ensure that law enforcement officials, prosecutors, judges and lawyers be provided with training necessary to enable the successful application of legal provisions aimed at combating racist crimes and other racially based discrimination.

² Istanbul Summit Declaration, at: <http://www.osce.org/docs/english/1990-1999/summits/istadec199e.htm>