



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Exchange of views with the European Commission against Racism and Intolerance (ECRI)

Speech by Mattias Guyomar

4 December 2025

Dear Chair, Monsieur Cottier (Bettli Cottier, ECRI Chair)

Dear ECRI Members,

Dear current and former Judges of the Court,

Dear colleagues,

Dear participants,

It is a real pleasure to participate in this exchange of views as part of your plenary meeting, at the invitation of the Chair, *Monsieur Cottier*, and the other members of the ECRI Bureau. Thank you very much for taking this initiative.

I would also like to greet all ECRI's members, and especially the newly elected ones. I would particularly like to welcome *former President of the Court, Judge Sicilianos, dear Alexandre*, as well as ECRI member and *former Judge of the Court, Kristina Pardalos*.

Today, I am accompanied by *Judges Elósegui, Felici and Derenčinović* who kindly agreed to give brief presentations on topics which correspond to some of the main trends identified in your latest annual report. Thank you, *dear Mariá, Gilberto and Davor* for joining me.

Judge *Elósegui* will speak about racial profiling and racist profile abuse; Judge *Felici* about discrimination against LGBTI persons in the field of teaching; and Judge *Derenčinović* about school segregation of Roma children. Each of them will illustrate their remarks with concrete examples from the Court's case law and answer any questions.

I see today's exchange as an opportunity to seek further convergence between our case-law and your monitoring work. This complementarity between the Court's case-law on the one hand, and the work of ECRI and other Council of Europe monitoring bodies (such as the CPT), on the other hand, results in the "**double legitimization**" of our work. Our substantive cross-references clearly show that our relationship is reciprocal and confer mutual legitimacy to each other.

Your Commission can be regarded as a **barometer** of the pressures and tensions that affect our societies. The work of ECRI constitutes an "early warning" mechanism on systemic problems and a reliable indicator of the evolution of discriminatory, racist or xenophobic practices and discourse in

Europe. As such, it enables the Court to assess their impact on human rights and to diagnose the health of our democracies.

Through its monitoring work, distilled in the form of reports and seventeen General Policy Recommendations, ECRI has regularly contributed to the work of the Court. There are too many examples to mention here, but some recent ones where the Court has referred to the findings of your Commission include cases concerning crimes motivated by sexual orientation (*Bednarek and Others v. Poland*, 2025), restrictions on children's access to information about same-sex relationships (*Macatė c. Lituanie [GC]*, 2023), or threats made against NGOs working for the protection of minority and migrant rights (*Ilareva and Others v. Bulgaria*, 2025). Conversely, ECRI often refers to the judgments of the Court in its General Policy Recommendations as well as in some of its country monitoring work: for example, in recent reports on Croatia¹ (on the effectiveness of investigations of hate crimes), Türkiye² (on legal gender recognition for transgender persons), Serbia³ (on the right of recognised refugees to travel outside of the country, and the legal recognition for same-sex couples).

To this, one must also add the inter-personal exchanges. Here, I reserve a special mention for Judges *Elósegui* and *Felici* who took part in the bilateral exchange with ECRI six years ago, during your Commission's 80th plenary meeting in 2019, together with Judge *Sicilianos* who was the President of the Court at the time. I should also mention the last two plenary meetings in which my predecessor Marko Bošnjak, then Vice-President of the European Court of Human Rights, participated; as well as the annual seminar held by ECRI with equality bodies in last October, in which the Court was represented by Section President, Judge Šimáčková.

For the purposes of my short introduction this morning, I would like to share with you **two examples** of how the Court is able to respond to issue of discrimination in its case law.

The **first example** is how, the Court, by applying its 'living instrument' doctrine, has progressively extended the substantive ambit of the protection provided by Article 14. This has partly compensated for the incomplete process of ratification of Protocol No. 12 to the Convention, which complements the protection offered by Article 14 by providing for a general prohibition of discrimination. So far, Protocol No. 12 has been ratified by 20 of the 46 member states – most recently, by Malta in 2016 and by Portugal in 2017.

To fill this gap, the Court has interpreted the Convention in a manner which finds the prohibition of discrimination provided for by Article 14, read in conjunction with other, substantive rights, to be applicable to various circumstances. For this to happen, as you know, it is necessary, but also sufficient, for the facts of the case to fall "within the wider ambit" of another provision of the Convention (*Beeler v. Switzerland [GC]*, 2020, § 48).

In the area of racial profiling, for example, this interpretation has allowed the Court to define the criteria by which to assess whether identity checks fall within the ambit of Article 8, triggering the applicability of Article 14 (*Muhammad v. Spain*, 2022; *Wa Baile v. Switzerland*, 2024; *Seydi and Others v. France*, 2025).

The Court has also applied Article 14 taken together with the right to education, protected by Article 2 of Protocol No. 1, in cases concerning school segregation of Roma children (*Horváth and Kiss v. Hungary*, 2013; *Elmazova and Others v. North Macedonia*, 2022) or in cases concerning the use of the national language in pre-school education (*Djeri and Others v. Latvia*, 2024).

The **second, more recent development** that I wish to share with you is how, in recent years, the Court's interpretation of Article 14 has led it to connect discrimination with the phenomenon of 'secondary victimisation' of victims of criminal acts.

¹ <https://hudoc.ecri.coe.int/?i=HRV-CbC-VI-2025-12-ENG>, March 2025, paragraphs 49-50.

² <https://hudoc.ecri.coe.int/?i=TUR-CbC-VI-2025-16-ENG>, March 2025, paragraphs 32-34.

³ <https://hudoc.ecri.coe.int/?i=SRB-CbC-VI-2024-19-ENG>, April 2024, paragraphs 29 and 69.

Secondary victimisation, as defined by the Committee of Ministers, “occurs not as a direct result of the criminal offence but as a result of the response of public or private institutions and other individuals to the victim.”⁴

Avoiding it is one of the aims of the State’s positive obligation to provide the victim with adequate care during criminal proceedings. (*X v. Greece*, 2024).

In *J.L. v. Italy* (2024), in which the Court found a violation of Article 8 of the Convention, it also declared it ‘essential’ that the judicial authorities avoid reproducing sexist stereotypes, playing down gender-based violence and exposing women to secondary victimisation.

In another recent case, *I.C. v. the Republic of Moldova* (2025), the Court found a breach of Article 14, taken together with Articles 3, 4 and 8 of the Convention, in that the authorities clearly displayed a discriminatory attitude towards the applicant as a woman with an intellectual disability, and that this discriminatory attitude had prevented a proper investigation into the applicant’s complaints of human trafficking and sexual abuse. The Court’s ruling also made references to the concept of *intersectionality*, which calls for the consideration of the cumulative effects of the intersection of several grounds of discrimination – in this case, disability and gender.

And, in *L. and Others v. France*, nos. 46949/21 et al., 24 April 2025), the Court found that the secondary victimisation to which the French authorities had exposed the victim – a minor alleging having been subjected to non-consensual sex acts – constituted “discrimination”, in violation of Article 14 in conjunction with Articles 3 and 8 of the Convention.

I believe that this developing practice shows well how the Court applies its ‘living instrument’ doctrine and, indirectly, contributes to the shared objective of the fight against discrimination.

I hope that the above samples of the Court’s work, many of which touch upon the main trends identified by your Commission, provide some inspiration for today’s discussions. I am confident that our exchange today will lead us to more concrete ideas on ways in which we can continue our distinct but complementary roles.

Thank you.

⁴ Rec(2006)8 - Recommendation of the Committee of Ministers to member states on assistance to crime victims, <https://search.coe.int/cm?i=09125948801d0315> – superseded by Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime <https://search.coe.int/cm?i=091259488025a28a>