

ANNEXE : POINT DE VUE DU GOUVERNEMENT

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Albanie.

Conformément à la procédure pays-par-pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de l'Albanie sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui ne tient compte que de développements jusqu'au 10 décembre 2014, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

Viewpoints of the Albanian Authorities, as Appendix to ECRI's Fifth Report on Albania

Albanian authorities welcome the dialogue with the European Commission against Racism and Intolerance (ECRI), in the framework of the 5th cycle of monitoring, both during the contact visit in the month of September 2014 and in the following confidential dialogue on the Draft Report.

The constructive dialogue with the delegation of ECRI is seen as an opportunity to present the measures taken by the Albanian institutions, in relation to issues of discrimination, hate speech, violence and integration policies, and its specific related issues.

Albanian authorities welcome the reflection on comments on factual errors of the revised draft report.

Upon completion of the fourth cycle of monitoring (in 2009) and presentation of the interim conclusions on the recommendations of ECRI, the Albanian institutions have taken a number of measures to improve the legal framework on discrimination, hate speech, violence and hate crimes (anti-discrimination Legislation, hate speech, hate crimes) and devised integration policies for vulnerable groups and Roma, regarding the problems in the area of discrimination, education, employment, service delivery, housing etc.

Albanian authorities welcome the progress recorded by ECRI, after the adoption of the 4th Report on Albania. Albania does not have co-existence problems between different population groups. On the other hand, Albanian authorities are aware of the existence of some issues of concern: such as the implementation of the legal framework against discrimination; the small number of reported cases in connection with hate speech; problems of the Roma minority, mainly in the field of employment and housing, etc.

Given that the protection of human rights constitutes one of the objectives of the Albanian government to fulfil its international obligations and integration process in the European Union, the authorities express their commitment and willingness to implement the recommendations of ECRI, as identified in the 5th report of Albania.

In addition, the authorities present some observations and relevant information in relation to certain paragraphs of the report.

Regarding the 11th paragraph of the Report, we point out that the law "On protection from discrimination" (LPD) describes that "discrimination" means any distinction, exclusion, restriction or preference based on any cause mentioned in Article 1 of this law, has the purpose or effect of hindering or making impossible the exercise in the same way as others, of the rights and fundamental freedoms recognized by the Constitution of the Republic of Albania, with international conventions ratified by Albania, as well as with laws in force.

Besides for direct and indirect discrimination, this law also provides for several other forms of discrimination: "Discrimination because of association" (Article 3, paragraph 4), "concern" (Article 3, paragraph 5), "victimization" (Article 3, item 8), "Instruction to discriminate" (Article 3, paragraph 6), Denial of a reasonable adjustment (Article 3, paragraph 7)". LPD provides protection from discrimination on the rights and freedoms recognized in the Constitution, international acts and domestic legislation.

With regard to paragraph 16, we emphasize that the Law "On protection from discrimination" emphasizes the burden of proof in its Article 33.6. The Commissioner for Protection from Discrimination notices an increase in the number of complaints by written opinion to this institution. The courts distribute the burden of proof in cases of alleged discrimination by public administration. In cases where it is an alleged discrimination by private entities, the same is not observed, in terms of the obligation of the burden of proof.

Concerning paragraph 30 of the Report on the lack of reliable data on hate speech by the State Police, we report that in the period 2011-2014, for the criminal offence "incitement of hatred or conflict" (article 265 of the Criminal Code, as amended), the State Police recorded one case each for 2011, 2013 and 2014 and two cases in 2012.

Regarding paragraph 30, according to the data of the Prosecution Office, during the period 2008 - June 2014, the Prosecution Office registered 5 criminal proceedings under article 265 of the Criminal Code and 3 criminal proceedings under article 266 of the Criminal Code.

The Prosecution Office has filed charges in court for one criminal proceeding against two accused persons for the criminal offences provided by the article 151 (destruction of property by fire) and article 265 (incitement of hatred and conflict) of the Criminal Code. At the end of the trial, the Court of Appeal declared the two accused persons guilty and sentenced them to prison. It also decided for the termination for two criminal proceedings under the article 265 of CC; the suspension of the investigations for one proceeding under article 265; and two proceeding under article 266 for not finding the authors. Two proceeding are in the preliminary investigation phase (1 proceeding under article 265 and 1 proceeding under article 266).

Regarding paragraph 35 of the Report, "on not reporting many cases of hate speech in the Police", we point out that the State Police analyze and pursue with responsibly every reported criminal offenses case, including crimes based on incitement through the use of hate speech.

Regarding paragraph 49 "on the CPD reports that some LGBT persons have faced harassment by the police when asking for protection or help", the State Police clarify that has not registered any case reported by any citizen whose rights have been violated or has been mistreated in police premises, due to ethnicity, gender, religion and sexual orientation. Police also treats equally, without discrimination all citizens, as defined in Article 18 of the Constitution of the Republic of Albania.

Regarding paragraph 37 of the Report, the State Police clarify that, in order to prevent hate crimes, particularly those against vulnerable groups, the local police structures have established links and cooperation with groups such as the Roma, Egyptians and representatives of LGBT organizations by conducting the following activities:

- The identification of Roma and Egyptian communities, their locations or settlements, associations/organizations representing the community.
- Organize joint meetings between the police and the Roma and Egyptian communities to exchange information regarding problems with the rule of law and crime, as well as their concerns regarding human rights violations and discrimination on the bases of ethnicity, etc.

- Identification and treatment of problems to resolve conflicts in these communities or with other residents, to address and resolve them according to the law.
- Identification and legal treatment of cases of rights violations, mistreatments or abuses committed by the police personnel against the citizens of these communities.
- The State Police have supported the initiative/proposal made by the organization "Pro LGBT" to draft and sign a joint act (cooperation agreement), so that the police structures increase the degree of responsibility for the protection and respect of the rights of the LGBT community.
- The police have taken all measures to ensure the full exercise of the right to freedom of assembly, whenever associations that represent and protect the rights of the LGBT community, such as "Pro-LGBT", Pink Embassy, etc., have submitted requests for holding peaceful assemblies in public places.

Regarding paragraph 48, the Prosecution Office underlines that the case was immediately prosecuted after the denunciation by the State Police.

Regarding paragraphs 44 and 45 of the Report, the Audiovisual Media Authority (AMA) informs that, in October 2014, two members of AMA's were elected by the Parliament (by decisions no. 74 and no. 75 dated 09.10.2014). In November 2014, the Parliament elected the President of AMA (by decision no. 94/2014, dated 06.11.2014). Currently, only one of seven AMA members has not been chosen yet.