

## **APPENDIX: GOVERNMENT'S VIEWPOINT**

### **The following appendix does not form part of ECRI's analysis and proposals concerning the situation in "the former Yugoslav Republic of Macedonia"**

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of "the former Yugoslav Republic of Macedonia" on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account developments up until 9 December 2015, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.



**Comments of the Government of the Republic of Macedonia  
ECRI Fifth monitoring cycle**

**I Common topics**

**1. Legislation against racism and racial discrimination**

**Criminal law provisions**

**Paragraph 2**

Article 319 of the Criminal Code contains "language and citizenship". At the same time, also "gender" is considered grounds for discrimination contained in the said incriminations under Articles 39 (5), 319 and 394-d.

**Paragraph 4 and 5**

The offense under Article 319 reads: Inciting hatred, discord, or intolerance on national, racial, religious, or other discriminatory grounds:

1) Whoever by force, mistreatment, endangering the security, by ridicule of national, ethnic, religious and other symbols, by burning, destroying or otherwise damaging the flag of the Republic of Macedonia or flags of other countries, by damaging objects belonging to others, by desecrating monuments, graves or in other discriminatory way, directly or indirectly, shall cause or incite hatred, discord or intolerance based on race, color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition, or on any other grounds, provided by law or by ratified international treaty, shall be punished with imprisonment of one to five years.

2) A person who shall commit the offence under paragraph (1) of this Article by abusing his position or authority, or if because of these offences, riots and violence against people or property damage of large-scale have occurred, shall be punished with imprisonment of one to ten years.

With regard to the findings that there is no provision that criminalizes forming or leading a group that promotes racism, supporting such a group and participation in it, the Government point out the following: Article 394 defines the offence of Criminal association, which criminalizes the actions of:

1) A person who shall create a group or gang which aims committing offenses for which a perpetrator may be imposed a sentence of three years or more, shall be punished with imprisonment of one to ten years.

2) The member of the group or gang shall be punished with imprisonment from six months to five years.

3) The member of the group or gang who discloses the group or the gang, before committing a crime as its member or for it, shall be pardoned.

Based on the foregoing it comes out that creating a group or gang that promotes racism as well as a member of such a group, in accordance with Recommendation no. 7 ECRI, is criminalized under the said criminal offense under Article 394 of the Criminal Code of the Republic of Macedonia and in relation to Article 319.

**IV Integration policies**

**-Integration in the education System**

**Paragraph 50**

In the part alleging that students learn the subject of history according to different curricula, it should be said that the history curriculum is the same for all pupils; but in its implementation, there is the appearance of different interpretations. Likewise,

as regards the Strategy for Integrated Education, it is alleged that the Strategy has not been followed by an Action Plan; this does not correspond to the actual situation; namely, the Strategy includes an Action Plan with defined activities and deadlines. The dynamics of implementation of activities does not follow the terms set out in the Action Plan of the Strategy.

#### **Paragraph 61**

About the low percentage of inclusion of Roma children in primary education, as an attachment the Ministry of Education and Science cites statistics for three school years showing that the number of Roma pupils enrolled in primary education is high and it is constant during the transition from one school year to another; in other words, such number or the dropout rate is low.

##### **2013/14 school year**

- Total number of Roma pupils in primary education - **9615 (5026 boys and 4589 girls)**;
- Total number of Roma pupils enrolled in first grade of primary education - **1297 (699 boys and 598 girls)**.

##### **2014/15 school year**

- Total number of Roma pupils in primary education - **9506 (4846 boys and 4660 girls)**;
- Total number of Roma pupils enrolled in first grade of primary education - **1158 (567 boys and 591 girls)**.

##### **2015/16 school year**

- Total number of Roma pupils in primary education - **8737 (4502 boys and 4235 girls)**;
- Total number of Roma pupils enrolled in first grade of primary education - **1181 (647 boys and 534 girls)**.

In this school year (2015/16), there has been a decrease in the total number of Roma pupils in primary education because, according to the new concept of nine-year compulsory primary education, as of this school year nine-year primary schools have only one grade as such, while in the previous year there were two eighth grades (one according to the old eight-year and one according to the new nine-year concept), two seventh grades and so on, depending on the school year. Proof of this is the number of enrolled Roma first graders, a number that does not deviate significantly from previous school years.

In addition, the confirmation that the transition rate is high, is further illustrated by the transition rate of pupils completing primary education and continuing or enrolling in secondary education.

**In the 2013/14 school year**, out of **700** Roma pupils who successfully completed primary education, **79%** were enrolled or continued their education in secondary school.

**In the 2014/15 school year** the rate increased by **4.04%**; in other words, out of the total number of Roma pupils that completed their primary education (**631**), **83.04%** were enrolled or continued their education in secondary school.

#### **Paragraph 70**

Regarding the part that states that only 0.84% of the pupils successfully completed their primary education in the 2006/07-2011/12 period, the said figure of 0,84% refers only to preschool education. For primary education itself, data is listed in

Item 61, and there one can see a high percentage of successful completion of primary education and transition to secondary education.

#### **Paragraph 71**

As regards the number of Roma pupils that attend schools for children with special educational needs, a series of measures were undertaken whereby, according to the findings in the report, the number of Roma pupils in these schools decreased by **13% (from 50% in 2010 to 37% in 2015)**.

In 2015, the Government of the Republic of Macedonia set up a special working group made up of representatives from the Ministry of Education and Science, Ministry of Labor and Social Policy and Ministry of Health on the issue of education of Roma children with special educational needs; the members of this working group undertook a series of measures that report fails to mention, i.e., that an expert commission was set up to assess the abilities of these children. This commission recently completed the re-categorization of all Roma children included in special schools in order to determine whether these children should attend special schools or need to be redirected to attend regular schools. The commission report and its findings will be ready in the near future and appropriate measures will be undertaken based on the report. At the same time, work on adopting new rules for categorization is also in progress.

Concerning such statistics, in the 2014/15 school year, out of all enrolled pupils in special schools 26.5% were Roma children, while in special classes for children with special educational needs based in regular schools Roma children made up 37.8% of all such pupils. Hence, such re-categorization was conducted for all these children in order to determine the true diagnosis of the children.

#### **Paragraph 77-81**

In 2015, there was a process of evaluation of the 2012-2015 Equality and Non-Discrimination Strategy, involving several in-line institutions, social partners, civil society organizations, and international organizations involved in the implementation of the Strategy. The evaluation information and findings have been used as basis for drafting a new Equality and Non-Discrimination Strategy covering the 2016-2020 period. The new Strategy has been drafted by a special working group, composed of representatives of all in-line institutions and other stakeholders. The draft Strategy defines its mission to be: "efficient protection against discrimination and respect for the principle of equal opportunities and prohibition of discrimination of any person and /or groups of persons on grounds of their personal characteristics, especially vulnerable social groups (ethnic communities, women, the LGBTI community, persons with mental and physical disabilities, the elderly, children, refugees, underprivileged persons, internally displaced persons, and other vulnerable groups, persons belonging to religious communities and any other person that has been treated differently without any justified grounds and without a legitimate purpose)." As regards the ECRI recommendation that the authorities commission an independent external evaluation of the 2008-2015 Integration Strategy for Refugees and Foreigners, the Ministry of Labor and Social Policy would like to inform that the Ministry has already made an internal evaluation of the Strategy.

As regards the recommendation that persons whose refugee status in the Republic of Macedonia has ceased be included in the new Integration Strategy for Refugees and Foreigners and thus be granted access to social protection rights, persons whose status in the Republic of Macedonia has not been determined cannot be part of the new Integration Strategy for Refugees and Foreigners and cannot have access to social protection rights, which are envisaged under relevant laws.

As regards the recommendation for contingency plans for a sudden upsurge in the number of refugees and other protected persons, Republic of Macedonia has prepared contingency plans for a large scale influx of refugees and other protected

persons. The plans are regularly updated in cooperation with the Crisis Management Centre, in line with the current development of the situation in the field.

## **II Topics specific to the Republic of Macedonia**

### **1. Interim follow-up recommendations of fourth round**

#### **Paragraph 83 and 84**

In conducting border control activities and procedures, police officers fully apply the provisions of the Law on Border Control of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 171 dated 30 December 2010) and specifically Article 2 paragraph 1 sub-paragraph 4; Article 2 paragraph 3 items 4 and 19; Articles 4, 8 and 13; Article 15 paragraph 4, as well as others of the Law listed.

Moreover, the Ministry of the Interior would like to underline that the aforementioned Law on Border Control has been fully brought in line with Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 (Schengen Borders Code).

In the everyday work, the national border police applies common guidelines, best practices and recommendations on border control as outlined in the European Commission's Schengen Handbook (Practical Handbook for Border Guards), issued on 6 November 2006.

As regards trainings, the Ministry of the Interior stress that such trainings are being conducted on three levels in the Republic of Macedonia, all in keeping with the Core Curriculum for Border Guard Training issued by the FRONTEX European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established under Regulation (EC) No. 2007/2004 of the European Parliament and of the Council of 26 October 2004.

#### **Paragraph 97**

With regard to the recommendations referring to Gender Reassignment, when it comes to the issues surrounding the regulation of gender reassignment procedures and conditions, as well as issuing new identity cards to persons who had undergone gender reassignment surgery, the Ministry of the Interior would like to point to the following: In keeping with the Law on the National Identification Number of the Republic of Macedonia, the implementation of which is under the authority of the Ministry of the Interior, the national identification number represents a single individualized designation containing identity data of citizens and is composed of thirteen digits arranged in six groups, the fifth of which is a combination denoting the sex and ordinal number given to persons born on the same date (three digit number), being assigned on the basis of the data listed in the official birth certificates of any given person.

In line with the Law on Civil Registration of the Republic of Macedonia, the personal identification data of citizens are registered in the Registers of Births, the Registers of Marriages and Registers of Deaths, the keeping of which falls under the authority of the Civil Registry at the Ministry of Justice of the Republic of Macedonia.

Taking into account legal regulations and having in mind that all changes in the status of citizens are entered into the relevant National Registers, it can be concluded that if the Civil Registry at the Ministry of Justice files a Gender Reassignment Certificate, i.e. a Birth Certificate registering gender reassignment of a citizen to the Ministry of the Interior of the Republic of Macedonia, the Ministry of the Interior will adequately adopt a decision to assign a new national identification number aligned with the citizen's newly changed gender which will subsequently allow for new identification documents to be issued to the citizen to reflect that change.

