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ECRI REPORT ON SERBIA

(fifth monitoring cycle)

Adopted on 22 March 2017

Published on 16 May 2017

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FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 7 December 2016; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's second report on Serbia on 9 December 2010, progress has been made in a number of fields.

The authorities have improved the protection against hate crime through a new provision making racist, homo- and transphobic motivation an aggravating circumstance. The Criminal Code (CC) also protects persons and organisations promoting equality and the Law on the Prohibition of Discrimination explicitly prohibits hate speech. The Commissioner for the Protection of Equality (CPE) has been provided with additional staff and appropriate premises.

In 2011, Radio Television of Serbia apologised to viewers for its role as a propaganda tool in the 1990s. In 2012, the Constitutional Court disbanded one racist, homo- and transphobic organisation. The Anti-Discrimination Strategy and Action Plan contain measures against hate speech and the parliament is in the process of adopting a code of conduct prohibiting its use. Journalists' associations adopted a Code of Ethics prohibiting hate speech and in 2012 a Press Council was established.

The High Technology Crime Department is increasingly focusing on cyber hate speech and in several police units officers have been designated as contact persons for LGBT persons. In the south of the country, a considerable number of police officers of Albanian origin have been recruited. In 2015, eight persons were arrested in relation to the Srebrenica crimes and in 2016 a National Strategy for the Prosecution of War Crimes was adopted. In 2010 and 2013, the parliament and the president apologised for the Srebrenica massacres.

The 2016 Roma strategy covers key integration issues and contains some quantified targets and indicators to measure progress. The vast majority of Roma at risk of statelessness have been registered and have received identity documents. Good practices have been developed for increasing school enrolment of Roma children and for rapidly intervening in cases of absenteeism. The authorities are mapping the infrastructure needs in Roma settlements and they have adopted strategic documents for improving the housing conditions of Roma.

The Anti-Discrimination Strategy provides for introducing legislation on registered partnerships for same-sex couples and on the change of name and gender of transgender persons. A considerable number of police and social welfare staff were trained on LGBT issues and an openly gay minister has recently been appointed.

ECRI welcomes these positive developments in Serbia. However, despite the progress achieved, some issues give rise to concern.

Incitement to hatred against groups living outside Serbia is not punishable under Article 317 CC and participation in the activities of racist groups is also not always punishable. The adopted text on genocide denial is too narrow. Public authorities are not placed under a positive duty to promote equality and there is no law on free legal aid. The CPE lacks the power to take up cases ex officio and to request the production of documents.

ECRI is highly concerned about a continued rise in hate speech in Serbian public discourse, which is amplified by wide media coverage. Politicians and the media use inflammatory, pejorative and nationalistic language and regional tensions in the area of former Yugoslavia have risen sharply. The current public discourse is reminiscent of the hate speech used before the recent wars in the region and surveys show high levels of underlying social distance between different parts of the population. Hate speech is increasingly disseminated via the Internet; football hooligans and their organisations also contribute to spreading hatred.

The system of (self) regulation of the media is not working properly: the Press Council is too weak and social media operators do not prevent and remove hate speech. Many

offences are not reported to the police and the police are not always open to receiving complaints, in particular from LGBT persons and Roma. The application of the legislation against hate speech and violent hate crime is inefficient and there is no decisive action against the activities of racist, homo- and transphobic hooligan groups.

The high levels of homo- and transphobic violence regularly become visible at LGBT Pride Parades. Violence against Roma is recurrent and the prosecution and sentencing of genocide and other racist war crimes is progressing slowly. High-ranking persons are not prosecuted and many terrible war crimes remain unpunished. Due to the resulting impunity, people belonging to different communities live in fear of a new wave of such hate crime.

The different Roma strategies and action plans have not been implemented in various areas. Only 6% of Roma children are enrolled in pre-school; only 46% complete the compulsory eight-year primary education and just 13% secondary education. Only half as many Roma girls as Roma boys attend and complete secondary school. The figures for Roma living in settlements and in particular of those displaced from Kosovo¹ are even worse. The efforts to improve the distressing housing conditions of many Roma are far too small in size and 72% of all Roma settlements are still informal. In important parts of the public services, not a single Roma is employed; members of other minorities are also strongly underrepresented. Unemployment appears to be particularly high in some areas predominantly inhabited by minorities.

LGBT persons face high levels of prejudice and security is a daily concern for them. A considerable proportion of discrimination is committed by civil servants and public officials do not always promote understanding and tolerance towards LGBT persons.

In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.

Serbia should bring its criminal, civil and administrative law in line with ECRI's General Policy Recommendation No. 7 and give the CPE the power to take up issues of discrimination ex officio.

The parliament and government should adopt codes of conduct prohibiting hate speech.^{*} Moreover, the authorities should initiate training for journalists, develop a strategy on combating cyber hate speech and reinforce (self-) regulation of media in order to prevent hate speech. The police and prosecution should designate contact persons for vulnerable groups, train them and build up regular dialogue with these groups. The recording, investigation and punishment of hate speech and violent hate crime should be improved and racist, homo- and transphobic hooligan groups should be banned. The authorities should efficiently implement the Strategy for the Prosecution of War Crimes and publicly acknowledge that the Srebrenica massacres constituted genocide.

The authorities should clearly distribute responsibilities and designate the financial and human resources for the implementation of the Roma strategy. Pre-school and school attendance and completion rates should swiftly be increased; particular focus should also be put on improving the housing conditions of Roma and on hiring a proportionate number of persons with minority background to the public services.^{*} Furthermore, the authorities should develop integration indicators and strengthen the collection of equality data.

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

^{*} This recommendation will be subject to a process of interim follow-up by ECRI not later than two years after the publication of this report.

The authorities should introduce registered partnerships for same-sex couples, regulate the change of name and gender of transgender persons, create a safe environment for LGBT persons and promote a culture of tolerance towards them.

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation against racism¹ and discrimination²

- Criminal law

1. The assessment of Serbia's criminal law shows that several essential elements of ECRI's General Policy Recommendation (GPR) No. 7 on National legislation to combat racism and racial discrimination have not yet been introduced into Serbian law. Article 317.1 of the Serbian Criminal Code (CC) criminalises incitement to national, racial or religious hatred or intolerance among the peoples and ethnic communities living in Serbia. This fails to meet the requirements of § 18a of GPR No. 7 in several respects: incitement to violence is not mentioned³ and the grounds of skin colour, language, citizenship, ethnic origin, sexual orientation and gender identity are missing.⁴ Moreover, while incitement to hatred towards individuals and towards groups living outside Serbia should also be punishable, this provision only protects against incitement to hatred among the "people and ethnic communities living in Serbia". Incitement to discrimination is punishable under Article 387.3 CC, which also fails to mention the full range of prohibited grounds listed in § 18 of GPR No. 7.
2. Racist, homo- and transphobic insults can be punished under Article 170 CC taken in conjunction with Article 54a CC, according to which hate based on race, religion, national or ethnic affiliation, sexual orientation or gender identity is considered an aggravating circumstance for an ordinary criminal offence (§ 21 of GPR No.7). Article 174 CC on damaging a person's reputation on the grounds of racial, religious, ethnic or other affiliation can be interpreted in a way that would cover racist defamation (§ 18b of GPR No. 7). Article 387.5 CC makes it punishable to publicly threaten a person or group on the grounds of their race, skin colour, religion, nationality, ethnic origin or any other personal characteristic. While Articles 174 and 387.5 CC contain open ended lists of prohibited grounds, the grounds of colour, language and citizenship are missing in Article 54a CC.
3. Article 387.3 CC prohibits the public expression of ideas of superiority of one race over another. This is not fully in line with § 18d of GPR No. 7, according to which the expression of an ideology which depreciates or denigrates a grouping of persons on the enumerated grounds should also be criminalised. ECRI welcomes the fact that the Serbian authorities have taken steps to bring their criminal law in line with § 18e of GPR No. 7, Article 6 of the Additional Protocol to the Cybercrime Convention and Article 1.1c of the EU Framework Decision 2008/913/JHA. However, it regrets that denial of genocide or war crimes is only punishable if these acts have been recognised as genocide or war crime by domestic courts or the International Criminal Court; thus, the new text excludes

¹ According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

² According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

³ This is not remedied by Articles 387.4 or 344a.2 CC. Article 387.4 CC only criminalises the dissemination of texts, images or any other representation of ideas or theories that incite violence, but not other, in particular the verbal forms of incitement to hatred. Article 344a.2 CC requires a result in the form of actual violence, whereas incitement to violence is not a result crime. Articles 34.2 and 121 CC make it an offence to call on a specific person or group to commit a violent act, but they do not cover general calls to violence towards ethnic minorities or other vulnerable groups as recommended in § 18a of GPR No. 7. See also Article 1.1a of the Council Framework Decision 2008/913/JHA of the Council of the EU.

⁴ The statistics mentioned in § 19 indicate that some of these grounds are however covered in practice.

all decisions of the International Criminal Tribunal for the former Yugoslavia and the International Court of Justice.

4. Article 387.4 CC makes it a criminal offence to disseminate or otherwise make publicly available texts, images or any other representation of ideas or theories that support or incite hatred, discrimination or violence against any person or a group based on their race, skin colour, religious affiliation, citizenship, ethnic origin, or any other personal characteristic. This is not fully in line with § 18f of GPR No. 7, as it does not cover the preparatory acts of producing or storing such material and because it only mentions incitement to hatred and not the other offences listed in § 18a) to e) of GPR No. 7. Article 346 CC on the creation of a group for the purpose of committing criminal offences and Article 345 CC on conspiracy to commit an offence are not fully in line with §18g of GPR No. 7, according to which the creation or leadership of a group that promotes racism should be punishable, as well as support for such a group or participation in its activities.
5. Article 128.1, 128.2 and 387.1 CC are in line with § 18h of GPR No. 7 on the criminalisation of racial discrimination in the exercise of one's public office or occupation. ECRI is pleased to note that Article 387.2 CC even protects organisations campaigning for equality. Genocide is punishable under Article 370 CC (§ 19 of GPR No. 7). Instigating (Article 387.3 CC), aiding and abetting (Article 35 CC) or attempting (Article 30 CC) to commit criminal offences is punishable as recommended in § 20 of GPR No.7. ECRI strongly welcomes the fact that the authorities introduced the new Article 54a CC in 2012, which makes racist motivation an aggravating circumstance. ECRI has repeatedly underlined that such a provision is essential for robust protection of vulnerable groups against hate crime.
6. In line with § 22 of GPR No. 7, legal persons can be held responsible for committing criminal offences pursuant to Article 12 CC and Articles 2 and 6 of the Law on the Liability of Legal Entities for Criminal Offences. The sanctions set out in the aforementioned provisions can be considered effective, proportionate and dissuasive. Articles 48 to 53 CC provide for fines and alternative sanctions such as community service and disqualification from driving (§ 23 of GPR No. 7).
7. ECRI recommends that the Serbian authorities bring their criminal law into line with its General Policy Recommendation No. 7; in particular they should (i) include in all criminal law provisions aimed at combating racism and intolerance the grounds of skin colour, language, citizenship, ethnic origin, sexual orientation and gender identity, (ii) criminalise incitement to violence, (iii) criminalise incitement to hatred, discrimination and violence against persons or groupings of persons living outside Serbia, (iv) criminalise all denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes and (v) criminalise the creation or the leadership of a group which promotes racism, support for such a group, and participation in its activities.

- **Civil and administrative law**

8. In its previous report, ECRI noted (§§ 22 and 25) that the Serbian Law on the Prohibition of Discrimination (LPD) is broadly in line with GPR No. 7.⁵ In the following paragraphs, ECRI will concentrate on the remaining shortcomings.
9. The definition of indirect discrimination in Article 7 LPD is not fully in line with European standards such as §§ 1c and 4 of GPR No. 7, as its wording suggests

⁵ Concerning the compatibility with EU anti-discrimination standards see EU EC 2015: 56.

that it only covers the actual occurrence of disadvantages,⁶ whereas it should be possible to challenge apparently neutral provisions even before actual disadvantages occur.⁷ Furthermore, under the LPD the instruction to discriminate⁸ and the announced intention to discriminate do not appear to be considered forms of discrimination as recommended in § 6 of GPR No. 7. On the other hand, ECRI welcomes the fact that Article 11 LPD explicitly prohibits hate speech as a form of discrimination.⁹ It also takes positive note of the authorities' plan to amend the provision on indirect discrimination.

10. The general prohibition of discrimination in Articles 1.1, 4.2 and 8 LPD applies, according to its wording, to everybody both in the public and in the private sectors, in all areas (§ 7 of GPR No. 7).¹⁰ ECRI is pleased to note that the Commissioner for the Protection of Equality (CPE) is preparing amendments in order to narrow the scope of the remaining exceptions.¹¹ At the same time, ECRI notes that discussion are continuing about whether this general prohibition also covers areas such as housing or social protection.¹² Therefore, it encourages the authorities to clarify, when amending the LPD, the general prohibitions' wide scope of application and the scope of the exceptions.
11. Article 81 of the Constitution stipulates that Serbia shall encourage a spirit of tolerance and intercultural dialogue in the fields of education, culture and information, and that it shall implement efficient measures for enhancing mutual respect, understanding and cooperation among all people living on its territory. This is not fully in line with § 8 of GPR No. 7, according to which the law should explicitly place all public authorities under a positive duty to promote equality and to prevent discrimination in carrying out their functions. ECRI considers that this general positive duty should be introduced into the LPD or the Constitution.¹³
12. ECRI has received no information indicating that the law places public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and positively promote a policy of non-discrimination (§ 9 of GPR No. 7). According to § 10 of GPR No. 7, the law should also ensure that easily accessible judicial and/or administrative proceedings, including conciliation procedures, are available to all victims of discrimination. ECRI notes that access to justice for victims of discrimination is severely hampered by the absence of a law on free legal aid.¹⁴ It is pleased to note that a draft law on legal aid is under consideration and encourages the authorities to conclude the legislative procedure swiftly.
13. According to Article 20.2 of the Serbian Labour Law, discriminatory provisions in labour contracts shall be null and void. ECRI was not informed of the existence of a similar rule for collective labour agreements. Moreover, it received no information to indicate that Serbian law would, in areas other than labour law,

⁶ According to Article 8 LPD, indirect discrimination shall occur, if an individual or a group of individuals [...] is placed in a less favourable position [...].

⁷ European Equality Law Network (EELN) 2015: 8; EU EC 2015: 56.

⁸ EELN 2015: 11.

⁹ This provision could however be clarified by pointing out that the second half of Article 11 LPD contains concrete examples of forbidden hate speech, cf. EELN 2015: 8.

¹⁰ EELN 2015: 47 et seq.

¹¹ CPE 2016a: 259. The restrictions in the field of housing should be included into this work.

¹² EELN 2015: 11, 56 and 58; ECRI's 2nd report on Serbia §§ 22 and 25; CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (AC FCNM) 2014: 16.

¹³ See the CPE's similar recommendation No. 5 in its 2015 annual report, CPE 2015a: 258.

¹⁴ See in this respect also § 26 of GPR No. 7 and the related recommendation No. 10 in the 2015 annual report of the CPE, CPE 2015a: 258.

provide that discriminatory provisions in individual or collective contracts or agreements and other regulations be null and void (§ 14 of GPR No. 7).¹⁵

14. According to Article 55.4 of the Constitution, the Constitutional Court may ban associations which aim to violate human or minority rights, or to incite racist national or religious hatred (§ 17 of GPR No. 7). The activities of such organisations are also prohibited under Article 10 LPD. A political party, which pursues these aims or carries out such prohibited activities, shall also be prohibited by the Constitutional Court (Articles 37 and 4 of the Law on Political Parties). ECRI was not, however, informed about any additional obligation to suppress the public financing of such racist organisations (§ 16 of GPR No. 7).
15. ECRI recommends that the Serbian authorities bring their anti-discrimination legislation fully into line with ECRI's General Policy Recommendation No. 7; in particular they should (i) ensure that it is possible to take legal action in cases of indirect discrimination even before actual disadvantages occur, (ii) clarify the scope of the general prohibition of discrimination in the Serbian Law on the Prohibition of Discrimination, (iii) introduce a legal provision placing all public authorities under a positive duty to promote equality and to prevent discrimination in carrying out their functions, (iv) enact legislation on free legal aid including free representation by a lawyer, (v) provide that all discriminatory provisions in individual or collective contracts, agreements or other regulations should be amended or be null and void and (vi) provide for an obligation to suppress public financing of all organisations, including political parties, which promote racism.

- **Specialised national bodies**¹⁶

16. As described in ECRI's last report on Serbia, the Commissioner for the Protection of Equality (CPE) rests upon of a solid legal framework. She has a high degree of independence and possesses most of the functions and responsibilities listed in Principle 3 of ECRI's GPR No. 2 on Specialised bodies to combat racism and intolerance at national level and in §§ 24 and 52 of GPR No. 7. However, the CPE still lacks the power to take up cases of discrimination ex officio. While Article 37 of the LPD explicitly stipulates that the CPE can review the evidence submitted and hear the persons involved, the law unfortunately does not give her the power to request the production of documents and other elements nor to seize such items (§§ 24 and 52 of GPR No. 7).
17. ECRI recommends that the Serbian authorities give the Commissioner for the Protection of Equality the powers to take up issues of discrimination ex officio and to request the production of documents and other elements, and to seize such items.
18. In its previous report, ECRI considered that there was a need to increase the independence of the Protector of Citizens (Ombudsman), who is responsible for dealing with discrimination by public authorities. In 2015, the Council of Europe Commissioner for Human Rights expressed serious concerns at reports indicating that certain politicians and some media in Serbia had attempted to cast doubt over the Ombudsman's independence and moral stature. He also referred to reports that the Ombudsman and his advisers were prevented by the Minister of Defence from completing their inspection of the Military Security

¹⁵ EELN 2015: 89 states that in Serbia there are no mechanisms to ensure that contracts, collective agreements, internal rules of companies and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment.

¹⁶ Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

Service, which was being carried out within the framework of the Ombudsman's mandate.¹⁷ During its country visit to Serbia, ECRI received information indicating that these issues have not been resolved.¹⁸ Reminding both sides of Principle 7 of its GPR No. 2, ECRI considers that the authorities and public officials should concentrate on the substance of the Ombuds' reports and recommendations and avoid endangering the institution's independence.

2. Hate speech¹⁹

- Data

19. In Serbia, there are no comprehensive statistics on hate speech. According to the 2013 Anti-Discrimination Strategy, available data from various sources indicate that interethnic incidents including hate speech are still relatively frequent, although decreasing over recent years.²⁰ According to statistics from the prosecution services, criminal charges on hate speech were pressed against 216 individuals between 1 January 2011 and 30 May 2016. Out of these, 211 were based on Article 317 CC, three on Article 387 CC and two on Article 174 CC. 207 concerned the victim's national or ethnic origin, five their religious affiliation²¹, one their citizenship and one their sexual orientation. Most offences target Roma and lesbian, gay, bisexual or transgender (LGBT) persons. 106 persons were indicted and 41 persons convicted. Another 138 complaints were filed for racial (20) and homo- and transphobic (118) cybercrime.²² These cases led to the conviction of 20 persons under Article 138 CC, of three persons under Article 317 CC and of one person under Article 387 CC. The police statistics, which have been published by ODIHR for the years up to 2015, contain slightly higher figures.²³ In 2015, the Press Council identified 20 violations of the Code of Ethics' provisions on discrimination and hate speech.²⁴ The CPE does not have separate statistics on hate speech, but informed ECRI that she had issued 35 warnings concerning hate speech in the media in 2015.
20. A survey carried out by the CPE in 2012 and 2013 indicated considerable levels of underlying social distance affecting a number of vulnerable groups. Among the surveyed persons, 80% would not like to have a LGBT person in their family, 57% responded so for people of Albanian origin, 53% for Roma, 45% for asylum seekers, 41% for people of Croat and 40.9% for people of Bosniak origin. Among the small number of surveyed persons belonging to ethnic minorities, two thirds of Bosniaks and one third of Roma responded that they would not marry members of the Serbian population.²⁵

¹⁷ CommDH 2015b.

¹⁸ See e.g. Balkan Insight 2016a and c; Informer 2016 and Nuns 2016a.

¹⁹ This section covers racist and homo/transphobic speech. For a definition of "hate speech", see § 6 of the preamble to ECRI's GPR No. 15 on combating hate speech and Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech", adopted on 30 October 1997.

²⁰ Government 2013: 21.

²¹ 22 cases registered under national or ethnic origin also concerned the ground of religion. Out of the total of 27 cases involving this ground, 12 were targeted Muslims, 7 at Catholics, 5 at Jehovah's witnesses and 3 at Jews.

²² The offences against LGBT persons were registered under Article 138 CC on endangering the safety of others.

²³ Office for Human Rights and Minority Rights of Serbia 2016; OSCE, ODIHR 2016.

²⁴ Protector of the Citizens 2016a: 6. 11 cases concerned media not having accepted the Council's full jurisdiction.

²⁵ Center for Free Elections and Democracy (CeSID) 2012: 7 et seq.; CPE 2015: 20 et seq. The last results would seem not to be representative.

- **Racist public discourse**

21. ECRI is deeply concerned about the continued raise of hate speech in Serbian public discourse, which is amplified by wide media coverage. In 2015, the CoE Commissioner for Human Rights observed that it has become common practice for senior public officials to verbally attack journalists, calling them ‘traitors’ and ‘foreign mercenaries’ working against Serbian interests.²⁶ Such attacks are often followed by a shorter or longer period of denigration by a number of media.²⁷ “Witch hunts” of this sort also target political opponents and human rights activists working on war crimes.²⁸ In September 2016, one such campaign resulted in dozens of online death threats against two journalists on the grounds of their supposed ethnic background.²⁹
22. In addition, various interlocutors informed ECRI that regional tensions in the area of former Yugoslavia have risen sharply in recent months.³⁰ According to observers, the nationalist rhetoric and widespread use of terms such as foreign mercenaries, traitors, foreign agents, spies and “Šiptars”³¹ in current public discourse are reminiscent of the kind of hate speech used before the recent wars in the region.³² Relatedly, publications with nationalist and even racist content continue to receive wide attention.³³ There has been a resurgence in support for Second World War ideologists, pro-fascist groups and persons indicted or convicted for genocide and racial war crimes, who are publicly cast in a positive light. Islamophobia is also raising. Respondents to the survey cited in § 20 believe that political parties, the government, parliament, media and the judiciary are the main sources of this kind of intolerance and discrimination. The government is considered both the most discriminatory institution and the key to resolving this issue.³⁴
23. Blatant examples of hate speech include statements made by the then Prime Minister Ivica Dačić two days before the 2013 Pride Parade.³⁵ Subsequently, upon decision of the CPE, Mr Dačić held a meeting with representatives of the organisation which had filed the underlying complaint to the CPE, who informed him about the situation of LGBT persons in Serbia.³⁶ In March 2014, Radomir Počuča, the then spokesperson for the Ministry of the Interior’s (MIA) anti-terrorism unit, openly called on football hooligans to use violence to sabotage an event organised by the NGO “Women in Black” on the fifteenth anniversary of crimes committed against Albanian civilians in Kosovo. His call was answered by a threatening rally which convened outside the NGO’s offices. When summoned before the High Court in Belgrade, Mr Počuča told media that

²⁶ CommDH 2015a : § 145 ; Protector of the Citizens 2015: 129.

²⁷ Protector of the Citizens 2015: 11 and 2016: 7 with a concrete example.

²⁸ Balkan Insight 2016b.

²⁹ OSCE Representative on Freedom of the Media 2016; Nuns Press 2016b. Among journalists, this pressure often leads to self-censorship (see § 27 below).

³⁰ See e.g. Financial Times 2016, BBC 2016, Balkan Insight 2016c. As this report is directed to the Serbian authorities, it concentrates on hate speech coming from Serbia.

³¹ CPE 2015: 98. “Šiptar” is a derogatory term for Albanians.

³² See for example Balkan Insight 2016c; Nuns Press 2016c.

³³ In this context, the 1986 Memorandum of the Serbian Academy of Science and Arts was mentioned several times. For an in-depth analysis of the root courses of hate speech against LGBT persons see Stakić 2011.

³⁴ CeSID 2012: 35 and Albanian Institute for International Studies 2013: 59 et seq.

³⁵ Mr Dačić stated: “We should not go to the other extreme and mollicoddle them. [...] They are equal with other citizens but do not tell me it is normal, when it is not. If it is normal, why are we the exceptions then? I have no hatred towards them, I just cannot accept that it is normal because it is not natural”.

³⁶ CPE 2015: 120.

he was on the front line in Ukraine.³⁷ With regard to derogatory statements about Roma made by the president of the local community of Sirča on 17 July 2014³⁸, the CPE and the Superior Court of Belgrade both found that they constituted a serious form of discrimination and that he had to both refrain from making similar statements again and publish, at his own expense, the verdict and an apology in a daily newspaper with nationwide distribution.³⁹

24. On a positive note, ECRI is pleased to highlight that there are regularly calls from senior government officials for tolerance, in particular towards LGBTI people, and that there is almost no public hate speech against refugees in Serbia.⁴⁰ During its field visit to the southern Serbian municipality of Preševo, ECRI's delegation also observed positive efforts of a new, young generation of politicians to develop better interethnic relations.

- **Racism in the media and on the Internet**

25. In 2011, Radio Television of Serbia (RTS) apologised to viewers throughout former Yugoslavia for its role as Slobodan Milosevic's principal propaganda tool in the 1990s.⁴¹
26. However, media outlets continue to give coverage to hate speech from politicians and other public figures, amplifying its effect. The inflammatory language used in the media makes an additional contribution to the increasing tensions between ethnic groups in the country and in the region.⁴² Concerning a referendum held in the neighbouring Republika Srpska in September 2016⁴³, the OSCE Representative on Freedom of the Media noted that media outlets in both Bosnia and Herzegovina and Serbia had published a number of articles referring to the threat of a new armed conflict in and around Bosnia and Herzegovina and urged all stakeholders to avoid using any language which could escalate the situation further.⁴⁴
27. According to analysts, many media outlets are struggling to survive commercially following their recent privatisation, resulting in a growing "tabloidisation" of the print media and an increase in the number of reality shows on television.⁴⁵ Both trends contribute to the proliferation of inflammatory language and hate speech. In a recent survey, 54% of journalists cited unprofessional reporting and a lack of relevant education as the biggest issues facing the profession. Furthermore, 28% expressed concerns about threats and blackmailing, 41% had occasionally experienced censorship and 49% responded that they or their colleagues occasionally practiced self-censorship.⁴⁶

³⁷ CSO Coalition for Monitoring of the Implementation of OSCE Commitments 2015: 94; YUCOM 2016. In total, complaints were filed against 12 persons for criminal offences committed against this NGO.

³⁸ "Sirča is having difficult times. Neither floods nor earthquakes have degraded Sirča as the settlement of Kosovo Roma. We are not racists, but we cannot live together with them because our peace is disrupted. [...] We cannot mix with them".

³⁹ CPE 2016: 180; EELN 2015: 97.

⁴⁰ However, observers fear that this situation may change, given that many refugees are no longer able to merely pass through the country and may therefore be forced to ask for asylum in Serbia in greater numbers. See in this context § 20.

⁴¹ The Guardian 2011.

⁴² See e.g. Protector of the Citizens 2016: 186; Albanian Institute for International Studies 2013: 58.

⁴³ The Republika Srpska is one of the two administrative entities which make up Bosnia and Herzegovina.

⁴⁴ OSCE Representative on Freedom of the Media 2016.

⁴⁵ Nyman-Metcalf K. et al. 2015 : 8 et seq.

⁴⁶ Protector of the Citizens 2015: 10.

28. Media outlets often reveal the ethnic background or religion of persons suspected of criminal offences. In 2015, the CPE recorded 69 cases in which the disclosure of the ethnic background or other personal characteristics of suspected criminals by media outlets led to a complaint in the area of public information and media.⁴⁷ On a positive note, the recent Pride Parade 2016 received better media coverage than in previous years, though reports highlighted the costs of the heavy police protection for the event, as if insinuating that LGBT persons were responsible for this.
29. Hate speech is increasingly disseminated via the Internet. Various interlocutors informed ECRI that hate speech targeting vulnerable groups on Internet forums and in social media is on the rise. The MIA's High Technology Crime Department found, for example, that 30 people had threatened the organisers of the 2015 Pride Parade and posted hate speech on social networks. Antisemitic and islamophobic postings are also frequent.⁴⁸ In many cases, hate speech of this sort can be posted anonymously, which hampers criminal investigation. According to a recent study on digital violence, two thirds of all secondary school students had at least once been exposed to digital violence, including hate speech. The study also points out that there is a strong link between digital and "traditional" violence.⁴⁹

- **Extremist groups and racism in sport**

30. According to the authorities, two extremist and racist groups have been disbanded by the Constitutional Court in recent years. However, it would seem that one of these, "Obraz", is still active; the organisation attempted to organise a demonstration against the 2016 LGBT Pride Parade.⁵⁰ Other extremist movements based on ideologies that oppose equality and respect for diversity have recently been gaining momentum.⁵¹
31. ECRI is particularly concerned about the activities of football fan groups, which are involved in unlawful and criminal activities.⁵² According to observers, there are strong links between violent football fan groups and far-right organisations which, in turn, have ties with nationalist politicians and organised crime.⁵³ ECRI was informed that several hundreds of supporters of the football team Red Star Belgrade travelled to Novi Pazar, a city mainly inhabited by people of Bosniak origin, for matches on 27 March and 28 August 2016. During both matches, the Red Star Belgrade supporters chanted songs including "Oh Pazar new Vukovar, oh Sjenica, new Srebrenica" and "Kill! Slaughter! A citizen of Novi Pazar should not exist!", and carried with them flags, symbols and pictures of persons and groups blamed for "ethnic cleansing" during the Second World War. The fans were accompanied by police officers, who chose not to intervene regarding this racist behaviour, despite its criminal relevance. ECRI also received reports of hate speech from football fans directed at Roma. In addition, there were reports that pressure and threats from extremist football fans were the main reason for the cancellation of the 2011 LGBT Pride Parade.⁵⁴ Serbian hooligans also repeatedly sang "Knife, wire, Srebrenica", a song glorifying the Srebrenica

⁴⁷ CPE 2016: 276. 21 of these cases concerned sexual orientation, 17 gender identity and 11 citizenship or ethnic origin.

⁴⁸ Belgrade Centre for Human Rights 2016: 58 and 326; Foundation for Political, Economic and Social Research (SETA) 2015: 457 et seq.

⁴⁹ CPE 2016: 40; Unicef 2013: 8.

⁵⁰ European Center for Not-for-Profit Law 2016: 24.

⁵¹ Protector of the Citizens 2016: 8.

⁵² Protector of the Citizens 2015: 11.

⁵³ See e.g. BBC 2010; Kulturni Centar Damad Novi Pazar 2015: 41.

⁵⁴ Opendemocracy 2013.

genocide.⁵⁵ Necessary responses to these activities are dealt with in §§ 55 et seq. of this report.

- **Responses to hate speech**

32. ECRI considers that decisive action is required to counteract the observed rise in hate speech. It is therefore pleased to note the proposed measures in areas such as prevention, criminal prosecution and media found in the 2013 anti-discrimination strategy and the 2014 action plan for this strategy's implementation.⁵⁶ The implementation of preventive measures is the first step in curbing the rise of hate speech in a sustainable way (cf. § 4 of ECRI's GPR No. 15). In this regard, the authorities should introduce and strengthen compulsory education at all school levels on human rights, the right to equality and the prohibition of hate speech and discrimination. This education should cover the horrifying consequences of hate speech in recent history, including genocide, as well as the fact that Islam, Judaism and Christianity stem from common sources and worship the same god.⁵⁷ Awareness-raising campaigns on these issues aimed at the general public should also be continued.
33. ECRI welcomes the fact that the Serbian Parliament is in the process of adopting a code of conduct, which will prohibit the use of hate speech by its members and provide for sanctions if breached. ECRI considers that the government needs also to adopt a similar code of conduct with efficient mechanisms for preventing and punishing the use of hate speech. Both codes of conduct should provide for training measures, unambiguous condemnation of breaches by high representatives of the state, as well as suspension and other sanctions for breach of their provisions (§ 6 of GPR No. 15). Moreover, political leaders should actively promote interethnic friendship and de-escalation of ethnic tensions in the country and in the region.
34. ECRI recommends that the Serbian Parliament and Government adopt codes of conduct which prohibit the use of hate speech, provide for suspension of mandate and other sanctions for breach of their provisions and establish effective reporting channels.
35. With regard to the media, ECRI notes with interest that in recent years a framework of (self-) regulation has been put in place with a view to preventing and punishing the use of hate speech. Article 75 of the 2014 Public Information Law stipulates that ideas, opinions or information published in the media shall not incite discrimination, hate or violence [...], regardless of whether the publication is considered a criminal offence. According to Article 51 of the 2014 Law on electronic media, the Regulatory body for Electronic Media (REM) shall ensure that the programme content of media service providers does not contain information which overtly or covertly encourages discrimination, hatred or violence.
36. In 2012 and 2013, two major professional associations for journalists adopted a Code of Ethics, point IV.1 of which states that journalists shall oppose all those who violate human rights or who advocate any kind of discrimination, hate speech or incitement to violence. According to point V.4, a journalist must be aware of the danger of discrimination that can be spread by media and shall do everything they can to avoid discrimination based on race, sexual orientation and other similar grounds.⁵⁸ A Press Council was established in 2012, including a Complaints' Commission whose jurisdiction covers the printed press, online

⁵⁵ Trost T. and Kovacevic N. 2014: 117; Kulturni Centar Dmad Novi Pazar 2015: 28; cf. also Balkan Insight 2014c.

⁵⁶ Government 2013 and 2014.

⁵⁷ Inter-religious tolerance should also be mandatory part of religious education.

⁵⁸ 1881 Journalists's Association of Serbia 2013.

media including news portals without print editions, and news agencies. Upon receiving a complaint, this Commission decides whether the aforementioned Journalist's Code of Ethics has been breached, including cases involving media actors who have not accepted its jurisdiction.⁵⁹

37. ECRI notes with regret the frequent, serious breaches of the Code of Ethics and considers that intensified, recurring training for journalists is crucial for improving respect of its standards.⁶⁰ Special attention should be given to the circumstances in which it is permissible to reveal information about the ethnic and religious background of suspect persons, namely only if it serves a legitimate purpose, such as in the case of a wanted notice (cf. §§ 20 and 88 of ECRI's GPR No. 11).
38. ECRI recommends that the Serbian authorities initiate intensive training for journalists on the journalists' Code of Ethics, which could be carried out, for example, by the Press Council, the Regulatory body for electronic media and the Commissioner for the Protection of Equality.
39. ECRI also deplores that the system of (self-) regulation is not working properly. The REM and its predecessor organisation have rarely taken action to combat the increasing use of hate speech in electronic media; in only two cases, one in 2011 and the other in 2016, did they impose sanctions, and only then due to high levels of public pressure. It is believed that the general lack of action is a result of political influence, facilitated by the REM's limited de facto independence.⁶¹
40. The Press Council has received an increasing number of complaints in recent years (109 in 2015, 80 in 2014 and 71 in 2013). In 2015, it found violations in 60 cases and issued 36 public letters to media actors who had not accepted its jurisdiction. In 20 cases, the Code of Ethics's provisions on discrimination and hate speech had been violated. However, several media actors refused to publish the Press Council's decisions. Because it cannot issue any other sanctions and does not have the power to act ex officio, the Press Council is widely considered to be too weak. According to media monitoring, a large number of violations of the Code of Ethics have not been dealt with.⁶²
41. Despite the fact that hate speech in the media constitutes a severe form of discrimination (Article 13.3 LPD) and in spite of there being a total of 35 cases in 2015, the CPE only issued warnings, rather than strong sanctions.⁶³
42. ECRI recommends (i) that the authorities ensure full independence of the Regulatory Body for Electronic Media (REM) and refrain from any political influence on this body, (ii) that the Press Council be provided with the power to take up cases ex officio, (iii) that the authorities ensure that the Press Council's decisions are followed up with financial sanctions, such as, for example, the cutting of public subsidies, (iv) that the REM, the Press Council and the Commissioner for the Protection of Equality take up all cases of hate speech in

⁵⁹ Press Council 2013: 1.

⁶⁰ Press Council 2013: 1 et seq.

⁶¹ South East European Media Observatory 2015: 2; Nyman-Metcalf K. et al. 2015: 12 et seq. The 2011 case concerned the statement made by singer Maja Nikolic on a reality TV show saying that "she hated Jews". Maja Nikolic was subsequently removed from the show at the request of the REM's predecessor organisation (Balkan Insight 2011b). The second case concerned islamophobic statements, SETA 2015: 460 and EU EC 2016: 20 et seq.

⁶² Nyman-Metcalf K. et al. 2015: 4; Protector of the Citizens 2015: 14 and 2016: 6 and 186; Press Council 2013: 2.

⁶³ For examples see CPE 2016: 97 et seq. Both the CPE and the Press Council decided for example that the use of the term "Šiptar" constitutes a violation of the LPD and the Code of Ethics, SETA 2015: 456.

the media, (v) that these institutions impose effective, proportionate and dissuasive sanctions (vi) and widely publicise their decisions.

43. Concerning online hate speech, ECRI notes that it is common for users to be able to post comments anonymously. Furthermore, many website operators do not monitor comments before their publication online and do not systematically remove instances of hate speech. ECRI therefore considers that the CPE, regulatory bodies and other stakeholders such as journalists' associations should develop a strategy on combating cyber hate speech. This could include elaborating standards for website operators, encouraging operators to adopt codes of ethics, ensuring that, by using efficient monitoring procedures, they prevent the posting of hate speech and that they remove existing hate speech promptly, as well as introducing relevant training. Social media networks should be obliged to prevent and remove hate speech from their sites through self-regulation and, if necessary, through state regulation. Schools should also pay more attention to cyber bullying among pupils and develop measures to prevent and counter this kind of hate speech.
44. Finally, the police, in particular the High Technology Crime Department, the LPD, journalist's associations, NGOs and other stakeholders should regularly monitor hate speech on the Internet and ensure that cyber hate speech and hate speech in other media is reported to the competent bodies.
45. ECRI recommends that the Serbian authorities develop a strategy on combating cyber hate speech, without encroaching on the editorial independence of the media.
46. Despite several positive developments, ECRI notes with regret that the criminal justice system is still failing to combat hate speech effectively. Firstly, ECRI was informed that there is a high level of so-called underreporting: many victims do not report hate speech to the police or other competent bodies.⁶⁴ In order to address this issue, police officers and prosecutors specialising in the investigation of hate speech and hate crime should be put in place. Given that hate speech is increasingly disseminated on the Internet, these officers need to have the specialist knowledge and technical tools to handle investigations in an efficient manner; they should also be in close contact with the MIA's High Technology Crime Department. Further training on handling hate speech and hate crime should be concentrated on these persons.
47. Secondly, civil society groups reported that the police are not always open to receiving complaints about hate speech incidents, in particular concerning Roma and LGBT persons.⁶⁵ In addition, members of vulnerable groups are often unaware of where and how to complain about such incidents. Officers specialising in hate speech and hate crime should therefore establish regular dialogue and co-operation with members of the relevant vulnerable groups. These should include Roma, other ethnic and religious minorities, LGBT persons and also journalists. Regular contact with these groups is a prerequisite for developing the mutual confidence and understanding required to ensure quick and efficient reporting of and responses to hate speech (§§ 18 and 67 of GPR No. 11).
48. ECRI was informed that some progress has been made in this regard. In four cities, police officers have been designated as contact persons for the LGBT community. Furthermore, the Office for Human and Minority Rights organises semi-annual meetings on hate crime, which involve various stakeholders. The prosecution services have established five information offices for victims and

⁶⁴ See for example Gay Straight Alliance 2015.

⁶⁵ With regard to LGBT persons, the CPE, in its 2015 annual report, cites surveys showing an unacceptable level of prejudice among police officers, CPE 2015: 69.

witnesses and the High Technology Crime Department is increasingly focusing on cyber hate speech. In the south of Serbia, where a multi-ethnic police force has been created through recruitment of considerable numbers of persons of Albanian origin (§ 17 of GPR No. 11), the reporting of hate speech and hate crime works better. Police contact officers should also be nominated for the Roma communities living throughout the country and for other ethnic and religious minorities. The obligation to create and maintain such structures should preferably be introduced into the law, for example in the framework of the on-going reform of the legislation on national minorities.

49. ECRI again welcomes the fact that the CPE is also competent for combating hate speech under Article 11 LPD and encourages it to fully make use of this competence. For this purpose the CPE should be included in the dialogue between the police, the prosecution and vulnerable groups.

50. ECRI recommends that the Serbian police and prosecution services designate, throughout the country, contact persons for vulnerable groups targeted by hate speech and hate crime. These contact persons should receive continuing training on the investigation of hate speech and crimes and build up and maintain, together with the Commissioner for the Protection of Equality, regular dialogue with these groups in order to ensure adequate reporting, investigation and prosecution of hate speech.

51. Thirdly, the application of existing criminal, civil and administrative law provisions against hate speech is inefficient. Despite wide-ranging training activities, many police officers still have little knowledge about discrimination, and their degree of social distance from vulnerable groups is high.⁶⁶ Against this background, ECRI takes positive note of the development of a new manual and plans to organise compulsory training for all police officers on recognising and responding to discrimination in 2017. The judiciary still suffers from inefficiency.⁶⁷ Statistics on hate speech cases are incomplete and do not contain detailed information on each reported case (see §§ 12 and 68 et seq. of GPR No. 11).⁶⁸ Moreover, these statistics are not published on a sufficiently frequent basis, e.g. monthly. In addition, criminal investigations into the registered cases are often expedited slowly and there is no transparency about the outcome of these investigations. This applies in particular to the field of cyber hate speech, in which the number of hate speech cases is soaring. Despite several training measures for the judiciary, very few cases go to court and the sanctions imposed are neither effective nor do they have a strong dissuasive effect.

52. ECRI recommends that the Serbian authorities establish and operate a system for recording and monitoring racist, homo- and transphobic incidents and the extent to which these incidents are brought before prosecutors and are eventually qualified as racist, homo- or transphobic offences. The police and prosecution services should investigate all reported cases of hate speech promptly and thoroughly and work towards effective and dissuasive punishment.

53. In the field of civil law, the lack of free legal aid (see § 12) hampers the application of the LPD. According to civil society sources, the CPE seldom uses its power to oblige perpetrators to apologise for their actions. Civil law cases on

⁶⁶ See the results of the study « Police Attitude towards Discrimination » summarised in Gay Straight Alliance 2015.

⁶⁷ Cf. CoE CommDH 2015: §§ 40 et seq.

⁶⁸ With regard to issues of data protection, which are often invoked as an obstacle to the recording of statistical data in the field of racism, see ECRI 2007c.

hate speech and discrimination also progress very slowly.⁶⁹ As a result, there is very little case law, few strategic cases are known by the wider public and ECRI has not been informed about a single case in which a victim of racist, homo- or transphobic hate speech has obtained compensation.⁷⁰

54. ECRI recommends that the Commissioner for the Protection of Equality and the Ombudsperson continue assisting victims of hate speech to bring cases before the courts.
55. More decisive action from the police, prosecution services and other authorities is needed to combat hate speech from racist organisations and, in particular, from racist football fan groups (cf. § 31).⁷¹ This issue is of particular importance given the role that racist and violent football fan groups played in the outbreak of the recent wars in the region. Observers point out that violent clashes between fan groups strongly influenced and even accelerated the pre-war crisis and that many members of Red Star Belgrade fan groups formed and participated in paramilitary organisations that were subsequently directly involved in the wars.⁷²
56. ECRI received no information about police investigations under Articles 317.1 or 387.3 CC of the hate speech observed during the aforementioned football matches in Novi Pazar. ECRI considers that the heavy police presence at football matches should be used to identify and remove racist symbols and banners, refuse access to sports grounds to persons carrying with them racist symbols or banners, intervene quickly to stop racist behaviour including the singing of racist songs, exclude racist persons from sporting events, document and secure evidence of hate speech and subsequently identify any persons taking a leading role in such behaviour (§§ 5 to 10 of ECRI's GPR No. 12). Other legal means, such as the rules on the dissolution of racist organisations, article 10 LPD (see § 14) and Article 346 CC (see § 4) should also be applied to racist fan groups.
57. ECRI strongly recommends that the authorities take immediate action to investigate, prosecute and punish racist behaviour of sports fans. It further recommends that the authorities take action to ban racist sports fan clubs.

3. Racist and homo/transphobic violence

- Data, extent of and response to the phenomenon

58. Official statistics indicate a decrease in the number of racist, homo- and transphobic incidents over the past five years and in 2016 in particular: 56 cases were registered in 2011, 39 in 2012, 24 in 2013, 32 in 2014, 33 in 2015 and nine until July 2016. The two most frequently targeted groups are Roma and LGBT persons. A recent survey indicates that violence against LGBT persons is underreported and that the real level of homo- and transphobic violence is much higher than the official statistics suggest: 23% of the surveyed Serbian LGBT persons reported that they had suffered physical violence.⁷³ Transgender persons are particularly affected by hate crime, most likely due to them being more easily identified.⁷⁴

⁶⁹ For examples see CPE 2016: 177 et seq. A positive exception is however the case of anti-Gypsism referred to in § 23.

⁷⁰ EELN 2016: 81 et seq.

⁷¹ According to the authorities, there have been 30 investigations on incitement to hatred at sports events since 2010, which ECRI does not consider sufficient given the extent of hate speech at sports events.

⁷² Colovic 2000 : 373 et seq. Opendemocracy 2013.

⁷³ NDI 2015: 11. 43% of the perpetrators were passers-by, 29 % hooligans and 14 % school colleagues.

⁷⁴ Cf. the study summarised in CPE 2016: 53.

59. The high levels of homo- and transphobia and related violence are regularly coming to the fore at LGBT Pride Parades. In 2010, at the first Pride Parade held in Belgrade since 2001, more than 100 people were injured during violent clashes between the police and far-right demonstrators, who attempted to disrupt the event. In addition, the offices of the Ombud were attacked and almost all windows broken. Over 100 people were detained for violent behaviour.⁷⁵ As a result, Pride Parades were banned for the following three years and only recommenced in 2014, again under heavy police protection. Criminal proceedings are still going on. LGBT persons are also frequently victims of domestic violence involving family members.⁷⁶ Civil society groups have recently launched a telephone helpline for victims of homo- and transphobic violence, which also collects data on hate crime.
60. Hate crime against Roma and its coverage in the media represent further significant challenges in Serbia. 38 cases of anti-Gypsist hate crime have been registered in the past five years: 8 in 2011, 11 in 2012, 3 in 2013, 8 in 2014, 6 in 2015 and 2 until October 2016.⁷⁷ According to civil society groups, underreporting is also a considerable issue with respect to anti-Gypsist hate crime. A recent, unreported case, filmed on video, is the one of a Roma boy who was severely beaten after playing music in a public space.
61. A series of hate crimes occurred in the aftermath of a football match between Serbia and Albania, which took place in Belgrade on 14 October 2014. During the match, a drone carrying a flag of so called “Great Albania” flew over the stadium. According to the authorities, this incident provoked 67 cases of insults and attacks on shops belonging to people of Albanian origin. In some cases, buildings were even set on fire. The majority of the attacks occurred on 14 and 15 October 2014; the number of attacks quickly diminished thereafter as a result of police protection measures.⁷⁸ In 28 cases, criminal charges were pressed and in 8 cases proceedings for misdemeanours were initiated.
62. ECRI considers that the issues to be addressed with regard to the prosecution of violent hate crime are similar to those already dealt with under criminal hate speech (§§ 46 et seq.): in addition to underreporting, ECRI was informed about a number of cases in which no investigation was opened.⁷⁹ ECRI is particularly concerned that, since its introduction in 2012, Article 54a CC on aggravating circumstances has not been applied in any of the cases mentioned in §§ 58 to 61, despite the prosecution services issuing mandatory instructions on this matter in December 2015. In this regard, ECRI refers to the case-law of the European Court of Human Rights, according to which state authorities investigating violent incidents must take all reasonable steps to establish whether they were racially motivated and whether hatred or prejudice based on ethnic origin played a role.⁸⁰ The police and prosecution must also apply these principles to homo- and transphobic hate crime cases. Finally, ECRI considers that the sentences imposed for hate crime are too lenient: in many cases fines

⁷⁵ Protector of the Citizens 2011: 28.

⁷⁶ For data until 2014 see Gay Straight Alliance 2015.

⁷⁷ These figures, which the authorities provided to ECRI’s delegation during the country visit, differ slightly from the figures given in CommDH 2015: §77.

⁷⁸ It was reported that some victims asked for police protection immediately after the match, but that this request was refused at that point.

⁷⁹ For example, following the physical assault of two transgender persons in southern Serbia in October 2015, the police stated that mere injury would not be prosecuted *ex officio*.

⁸⁰ *Natchova and Others v. Bulgaria* [GC], Nos. 43577/98 and 43579/98, 6.7.2005, §§ 160 to 168; *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14.09.2010, § 81.

of only up to 200 or 300 Euros are imposed and the perpetrators are not registered as convicted criminals.⁸¹

63. ECRI reiterates the recommendations already made in §§ 50 and 52. It considers that the specialised police officers and prosecutors should ensure that investigations are initiated *ex officio* in all hate crime cases, in particular when there is evidence pointing to the possible application of Article 54a CC. Explicit reference to Article 54a CC should be made by the prosecution in the indictment. The police and prosecution officers specialising in hate speech and hate crime should also receive continuous training on the investigation of hate crimes (cf. § 50).

64. ECRI recommends that the police and prosecution services ensure that investigations are opened in all cases of racist, homo- and transphobic violence, in particular when there is evidence pointing to the possible application of Article 54a of the Criminal Code on aggravating circumstances. Explicit reference to Article 54a of the Criminal Code should be made by the prosecution in the indictments.

- **Prosecution of hate crimes committed during the recent wars**

65. ECRI deeply regrets the slow progress made in the prosecution and sentencing of genocide and other racist war crimes (§§ 19 and 21 of GPR No. 7) committed during the recent wars. The CoE Commissioner for Human Rights and the OSCE recently concluded that the socio-political environment is not conducive to the proper investigation of war crime cases, that the number of investigations is decreasing, that high-ranking persons are not prosecuted and that many serious crimes remain unpunished. ECRI notes with satisfaction that, in 2015, eight defendants were arrested in relation to the Srebrenica crimes committed in 1995 and that the Serbian war crimes tribunal concluded its first Srebrenica-related case in February 2016 with a sentence for war crime of 10 years imprisonment.⁸² It also finds it positive that the government adopted a National Strategy for the Prosecution of War Crimes on 27 April 2016.⁸³

66. While noting with satisfaction the apologies for the massacres in Srebrenica made by the parliament in 2010 and by the president in 2013, ECRI deplors the fact that neither of them has explicitly recognised that these massacres constituted genocide, as has been determined by international courts.⁸⁴ In addition, ethnic minority groups point out that no systematic purge has been carried out in the armed forces involved in the crimes committed during the wars.⁸⁵ They also complain that subsequent crimes committed with a possible racist motivation have not been properly investigated. For example, it is not known whether, following a possibly racist, armed assault on the offices of a Minister of Bosniak origin in 2009, an investigation was initiated and, if so, what the result the investigation was. As a result of this lack of transparent

⁸¹ A positive exception is a recent six-month prison sentence in a hate crime case targeting Roma.

⁸² OSCE Mission to Serbia 2015: 12 et seq.; Balkan Insight 2016d.

⁸³ Government 2016a.

⁸⁴ I.C.J., *Bosnia and Herzegovina v. Serbia and Montenegro*, 26.02.2007, ICJ Reports 2007, 43; ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, 24.03.2016. In 2010, the Serbian Parliament passed the following declaration: "The National Assembly of the Republic of Serbia strongly condemns the crime against the Bosnian population in Srebrenica in July 1995 in the manner determined by the ruling of the International Court of Justice as well as all social and political processes and phenomena that lead to the consciousness that the fulfilment of one's own national goals can be achieved by the use of armed forces and physical violence against members of another nation and religion, expressing thereby the condolences and apologises to the victims' families for what has not been done to prevent this tragedy." On 25 April 2013, President Tomislav Nikolic apologised for the massacre on behalf of the state and its people, *The Telegraph* 2013.

⁸⁵ See in this respect the analysis of the affiliations of the defendants in OSCE Mission to Serbia 2015: 17.

investigation and the resulting real or perceived impunity, people belonging to different ethnic communities continue to live in fear of the possibility of a new wave of hate crimes. They also perceive the conduct and behaviour of heavily armed military forces near the borders at Preševo as intimidating. ECRI's delegation witnessed such behaviour during its field visit.

67. Against this background, ECRI considers that political leaders should officially recognise that the massacres committed in Srebrenica constitute genocide. As such recognition is an indispensable component of efficient prevention of renewed interethnic hate speech and violence (see in this respect also § 18e of GPR No. 7), ECRI welcomes recent initiatives to this effect. Furthermore, ECRI considers that the Serbian authorities should pursue a clearer and stricter policy concerning the prosecution of racial war crimes and provide the judiciary with the necessary human and other resources to advance and conclude the prosecution and sentencing of war crimes efficiently.
68. ECRI recommends that the Serbian authorities efficiently implement the National Strategy for the Prosecution of War Crimes and that they publicly acknowledge that the Srebrenica massacres constituted genocide.

4. Integration policies

- Data

69. According to the 2011 census, 12.9% of the population of Serbia declared belonging to an ethnic minority and the report contains data about 21 distinct ethnic groups with more than 2 000 members. These include, in order of size, ethnic Hungarians (253 899); Roma (147 604⁸⁶, the Council of Europe estimate is 600 000); Bosniaks (145 278); Croats (57 900); Slovaks (52 750); Montenegrins (38 527); Vlachs (35 330); Romanians (29 332); Bulgarians (18 543); Albanians (5 809)⁸⁷; and others.
70. By the end of 2011, 17 590 foreigners had obtained temporary residence permits and by September 2016 less than 100 persons were granted refugee status or subsidiary protection.⁸⁸
71. Serbia rightly focuses its integration policies on Roma: Roma are the most disadvantaged group in Serbia and the situation of the approximately 23 000 Roma displaced from Kosovo is particularly bad.⁸⁹ At the same time, integration policies are also necessary for other ethnic, religious and linguistic minorities and for migrants, including the small, but increasing number of asylum seekers and refugees. As issues relating to the preservation of the identity of historical minorities are dealt with by the specialised Council of Europe monitoring mechanisms, ECRI will focus on the need for a policy for their social integration.

- Roma

72. In March 2016, the Serbian authorities adopted a new Strategy for Social Inclusion of Roma (2016-2025). It is the latest in a series of strategic documents on Roma integration. ECRI welcomes the fact that the document is well structured, contains clear analysis and objectives and covers key integration issues such as education, employment, housing and health. In some, but

⁸⁶ The number of persons having declared being Roma at the 2011 census is significantly higher than at the previous one. ECRI takes positive note of the fact that 700 Roma interviewers and coordinators were hired who carried out the census in many, but not all Roma settlements.

⁸⁷ The 2011 census was boycotted by the majority of the Albanian population in the Municipalities of Bujanovac and Preševo. In the previous census in 2002, 61 647 people declared that they belonged to the Albanian minority.

⁸⁸ Government 2013: 75; Belgrade Centre for Human Rights 2016: 13.

⁸⁹ CommDH 2015: 53 et seq.; UNHCR 2016.

unfortunately not all areas, it contains quantified targets and indicators to measure progress.

73. With regard to the evaluation of the integration policies for Roma, ECRI positively notes that there is now some detailed data available thanks to the cooperation of the authorities with organisations such as UNICEF. However, given that the existing data are fragmented and not up to date, ECRI considers that the authorities should fully assume responsibility for the issue of generating reliable equality data on an annual basis.⁹⁰
74. The existing data show one major step forward: according to UNICEF, the number of unregistered and undocumented Roma at risk of statelessness has decreased from 30 000 to about 2000; to date, no more than 700 are without birth certificates. As registration and identity documents are a precondition for access to many public services and social benefits, this progress has resulted in a major improvement in the living conditions of the newly registered Roma.⁹¹ The authorities also point out that 30 000 Roma children were vaccinated, that 1 300 Roma children were enrolled in pre-school and that 16 330 Roma received health insurance cards.
75. Aside from this, the evaluation in the following paragraphs unfortunately shows significant gaps in the implementation of the earlier strategies and action plans. As implementation has not worked properly in the past, ECRI is highly concerned about the fact that, at the time of its country visit in September 2016, there was still no implementation budget in place for the new strategy, that the responsibilities for the implementation of its objectives had not been clearly determined and that there was no strong monitoring unit and procedure in place.⁹² There was also not much focus on Roma originating from Kosovo, among whom 98% cannot even meet their basic nutritional needs and largely depend on the help provided by UNHCR. Against this background, ECRI is pleased to note that, following its country visit, the authorities have pushed forward with the development of an action plan and a financial plan and with the establishment of a coordination authority for the implementation of the strategy.
76. ECRI recommends that the Serbian authorities designate the central, provincial and local authorities that are responsible for the achievement of the goals and the implementation of the related measures of the Roma strategy, that they designate the necessary human and financial resources for their implementation, that they set up a strong monitoring procedure and structure and that they ensure that the specific needs of Roma displaced from Kosovo are met.
77. The following paragraphs focus on three parts of the action plan to illustrate the current situation. With regard to the first, the field of education, ECRI notes that only 6% of the Roma children aged 3 to 5.5 years are enrolled in pre-school education (compared to about 50% in the total population). This clearly contradicts Article 13 of the Law on Pre-school Educational Institutions, according to which children from vulnerable groups shall have priority in pre-school enrolment. In the subsequent compulsory Preparatory Pre-school Programme only 63% of all Roma children are enrolled (compared to 98% of the majority population); among the Roma children living in poverty, this figure is only 46%.⁹³ Furthermore, for children with Romani as their mother tongue,

⁹⁰ Government 2016b: 17. See in this respect <http://inkluzijaroma.stat.gov.rs/en>.

⁹¹ See however Ombudsman Vojvodina 2015 concerning “purpose-bound” birth certificates and cf. CommDH 2015: 58 et seq.

⁹² Standing Conference of the Roma associations of the citizens - the League of Roma 2016: 2.

⁹³ UNICEF 2014: 17; 2012: 2.

this programme is clearly too short to acquire sufficient mastery of Serbian or other languages of instruction.⁹⁴

78. The primary school attendance rate of Roma children increased in recent years from 74% to 88% in 2013⁹⁵. However, the gap compared to the total population remains significant and only 46% of all Roma children complete the eight-year primary education (compared to 88% of the total population).⁹⁶ Only half as many Roma girls as Roma boys attend secondary school; early and forced marriage, as well as a strong focus on housekeeping, are among the reasons. Even though the number of Roma students in secondary education has doubled in recent years, only 13% of all Roma and 7% of all Roma girls complete secondary education (compared to 69% of the total population).⁹⁷ The percentage of Roma completing tertiary education is almost zero (total population 13%). 7% of Roma children are affected by school segregation⁹⁸ and Roma are still overrepresented in special education, often due to insufficient mastery of the language of instruction.⁹⁹ Again, the situation of the ones living in Roma settlements is even worse. Only 69.1% of children of school-entry age enter the first grade and only 22% attend secondary or higher education.¹⁰⁰
79. ECRI considers that (early) education of Roma is a key issue for sustainable Roma integration. Children from vulnerable groups such as Roma children need to acquire the necessary skills and a good level of competence in the future language of instruction prior to enrolment in primary school. ECRI therefore very much welcomes and supports the recommendation made in the Poverty Reduction Strategy to consider introducing compulsory pre-school education to achieve the successful integration of vulnerable children in the regular education system. Reinforced investment in mandatory pre-school education will benefit children from all vulnerable groups, and in particular Roma children living in Roma settlements. ECRI is well aware that there are not yet sufficient pre-school facilities all over the country. New facilities should however be opened as a priority in or near Roma settlements, as the existing, pronounced lack of such facilities in these places amounts to structural discrimination.
80. ECRI recommends that the Serbian authorities significantly and annually increase pre-school attendance rates among Roma children and in particular among those living in Roma settlements. At the same time, they should ensure that they acquire sufficient mastery of the future language of instruction prior to entering primary school.
81. In the field of schooling, the different factors contributing to the unsatisfactory results are well documented in the Roma strategy.¹⁰¹ ECRI is pleased to note that in different projects and initiatives good practices have been developed to

⁹⁴ Government 2016b: 22.

⁹⁵ Republic of Serbia 2013: 299; according to UNICEF 2014: 18, 84.9% of children living in Roma settlements attended primary school in 2014.

⁹⁶ According to UNICEF 2014: 17, the primary school completion rate is of 93,4 % and in Serbian Roma settlements of 64%.

⁹⁷ Decade of Roma Inclusion Secretariat Foundation 2015: 61; UNICEF 2014: 18.

⁹⁸ Decade of Roma Inclusion Secretariat Foundation 2015: 61; Standing Conference of the Roma associations 2015: 2; PRAXIS 2016: 3.

⁹⁹ Decade of Roma Inclusion Secretariat Foundation 2015: 60 et seq.

¹⁰⁰ UNICEF 2014: 18.

¹⁰¹ The following should be mentioned as major factors for the low school enrolment and high early school drop-out rates: prejudice and discrimination at school; tolerated irregular school attendance despite the provisions on compulsory education; lacking special support; poverty; the need to make children work; indecent housing conditions; lack of money for schoolbooks, clothes and other school-related costs; early marriages; parents not being convinced of the advantages of education; and insufficient cooperation between schools and parents. Government 2016: 22 et seq.; CARE Serbia 2011.

improve the schooling of Roma. Pedagogical assistants help enrolling Roma children in school and mobile teams in 20 municipalities rapidly intervene in cases of school-absenteeism. Pedagogical assistants provide special support to Roma pupils facing difficulties during their schooling. ECRI considers that these successful models should now be implemented throughout the country. Best practices - for example on quick intervention in case of absenteeism - should be included in secondary education legislation and school inspectors should help to implement them. Given the particular importance of education for sustainable integration, ECRI considers that the authorities should in general give more priority to the implementation of the Roma strategies' objectives in the field of education. In order to overcome the implementation gap in this area, they should fix concrete target values for increasing school-enrolment and raising the school completion rate among Roma, bring these indicators quickly towards the level of the majority population and thus ensure observance of the legal obligation to compulsory education for Roma.

82. ECRI recommends that the authorities, in particular the school authorities, focus on objective 5.1 of the Roma action plan to ensure full inclusion of Roma children in pre-school, primary and secondary education, that they swiftly implement the related measures and that they fix ambitious goals for core indicators such as increasing enrolment and completion rates in primary and secondary school.
83. Concerning a second integration field, Roma housing, ECRI notes with regret that the efforts made are far too small in scale to improve the distressing housing conditions of tens of thousands of Roma. In the past, 593 segregated Roma settlements with more than 100 inhabitants were counted, out of which as many as 72% are informal. 37% of all Roma households do not have adequate access to drinking water at home (compared to 8% of the general population), 67% are not connected to the sewage system, 11% do not have an electricity supply, 49% have to cook on wood fires, the average number of rooms per person is 0.63 (compared to 1.13), the existing Roma housing units are of generally poor quality and many are located in segregated, remote and shabby neighbourhoods; only 32% of the Roma have property documents for their homes (compared to 90%).¹⁰²
84. Given the extent of the shortcomings and structural discrimination in this field, ECRI considers that political leaders, the competent ministries and local authorities need to make a major effort to remedy this unacceptable situation, for example by implementing the recommendations made by the UN Special Rapporteur on adequate housing in his recent report.¹⁰³ With regard to the Roma strategy, ECRI considers that quick progress is possible in implementing the measures under objectives 5.2.2, 3 and 4 of the strategy on spatial planning, legalisation of Roma houses and improvement of public infrastructure for Roma homes and settlements. In this respect it takes positive note of the ongoing mapping by the Ministry of Infrastructure of the infrastructure needs in Roma settlements. In addition, a national strategy for social housing was recently adopted and the city of Belgrade has adopted an action plan for the relocation of informal settlements in order to respect international and national standards in case of eviction and resettlement. A new housing law from December 2016 also improves protection in case of relocation. To achieve progress in objectives 5.2.5 and 6 of the Roma strategy on improving housing standards and building social housing units, funds from international donors, such as the Council of Europe Development Bank and the EU, should be

¹⁰² For more details see Government 2016b: 41 et seq. and 2013: 26; CommDH 2015: § 63; Decade of Roma Inclusion Secretariat Foundation 2015: 62 et seq.

¹⁰³ UN Special Rapporteur on adequate housing 2016.

solicited on a larger scale. In this respect, ECRI takes positive note of the development, under the 2013 EU Instrument for Pre-Accession Assistance (IPA), of a first series of housing related projects in 20 pilot municipalities. The new 2017 IPA shall also focus on social housing.

85. ECRI recommends that the Serbian authorities continue putting special focus on implementing the objectives and measures on Roma housing in section 5.2 of the Roma strategy and solicit for this purpose funding from international donors.

86. In the field of employment, special focus should be put on recruiting, out of the small, but increasing number of well-educated Roma, a proportionate number of civil servants to ensure proportionate representation (objective 3.6 of the Roma strategy). ECRI considers that affirmative action is particularly needed in this field to end the structural discrimination demonstrated by the fact that not a single Roma person is employed in important public service institutions and refers to the recommendation made in § 91 of this report. To implement the corresponding legal provisions¹⁰⁴, functions such as Roma coordinators¹⁰⁵, Roma health mediators, Roma teaching assistants in preschools, preparatory programmes and schools and Roma advisors and coordinators should be institutionalised; the approximately 300 Roma already working in these fields should furthermore be given sustainable working conditions. The federal administration, including ministries, should also hire Roma. The implementation of this objective would have the additional benefit of integrating into the civil service staff with sound knowledge about the situation and feasible solutions for the many problems Roma are facing.

- **Other ethnic, religious and linguistic minorities and migrants**

87. With regard to other minorities, ECRI will concentrate on a small number of issues. ECRI first of all considers that it is important to gather equality data concerning the living conditions of the different minorities in the country. Such data is indispensable for monitoring and evaluating whether and in which areas they suffer from discrimination. The complaints statistics of the CPE points to discrimination in the areas of labour, health and public services.

88. In this connection, ECRI notes with concern that unemployment seems to be particularly high in some areas predominantly inhabited by minorities. Whereas the overall unemployment rate was, according to the authorities, of 17.7% in 2015, ECRI was informed by civil society that unemployment reaches 60% and even 70% in some municipalities with high proportions of people of Albanian or Bosniak origin. ECRI regrets that the authorities do not have disaggregated unemployment data for these municipalities¹⁰⁶ and considers that these and other ethnic data should be collected. At the same time, it draws the authorities' attention to international standards developed in this field.¹⁰⁷

89. ECRI recommends that the Serbian authorities develop a system of integration indicators and strengthen the collection of equality data, while ensuring the principles of confidentiality, voluntary self-identification and informed consent. This data should be used to improve integration and reduce discrimination against minorities in fields such as education and employment.

¹⁰⁴ Article 77.2 of the Constitution, Article 21 of the Law on the Protection of Minority Rights and Freedoms and Article 9 of the Law on Civil Servants.

¹⁰⁵ See Association of coordinators for Roma issues 2016.

¹⁰⁶ The authorities have provided data at regional level. For the Pčinja district, where most Albanians live and for the Raška district, where the share of Bosniaks is highest, this data shows unemployment rates of 15.8% and 21.6%. The latter is the second highest figure among all districts.

¹⁰⁷ See ECRI 2007c and EU EC 2013.

90. At the same time, it encourages the authorities to stimulate economic activity in these areas, to attract employers to those municipalities¹⁰⁸ and to recognise diplomas obtained in neighbouring countries and at the universities in Kosovo and Metohija.¹⁰⁹ In this connection, ECRI's delegation witnessed, during its field visit to the municipality of Preševo, which is predominantly inhabited by persons of Albanian origin, more open and constructive attitudes among a new generation of local politicians and the provincial authorities (see also § 24). Their focus on solving concrete, practical problems is conducive to improving the economic and general situation of people belonging to minorities. ECRI considers that other authorities, minority representatives and minority councils should take inspiration from this positive approach to the important issue of inter-ethnic co-operation. The authorities should finally put special focus on hiring a substantial number of people belonging to minorities in all branches of the public services (see also § 86), as they have again stipulated in the 2016 Action Plan on the Exercise of Rights of National Minorities. They should set numerical targets for achieving this objective, and they could use mastery of minority languages as a selection criterion in recruitment procedures. In this context ECRI takes positive note of the new Law on Employees in the Autonomous Provinces and Local Self-government Units, which allows for such positive measures.

91. ECRI recommends that the authorities give high priority to hiring a proportionate number of Roma and members of other minorities to the civil service and ensure that they benefit from equally stable working conditions as other civil servants.

92. Many instances of discrimination can be avoided if people from all parts of diverse and multi-ethnic societies learn more than one language. ECRI therefore considers that the authorities should ensure that all people, and in particular people with minority background, acquire knowledge of the majority language at mother-tongue level and, at the same time, can learn and practice regional or minority languages.¹¹⁰ In this context, it is also particularly important to remove discriminatory content from schoolbooks and to replace out-dated schoolbooks in minority languages.¹¹¹ Aside from this, ECRI draws the authorities' attention to the other recommendations made in its General Policy Recommendation No. 10 on combating racism and discrimination in and through school education.

II. Topics specific to Serbia

1. Interim follow-up recommendations of the fourth cycle

93. The first interim follow-up recommendation in ECRI's second report on Serbia was that the authorities strengthen the institution of the CPE by ensuring that it has the human and financial resources to function effectively. ECRI is pleased to note that the CPE has been provided with 12 additional staff and that it moved to new, appropriate premises in autumn 2016. It therefore considers that this recommendation is now fully implemented.

¹⁰⁸ In the context of employment, ECRI again highlights the good practice example of the integration of a considerable number of persons with Albanian origin into the multi-ethnic police force in the south of the country.

¹⁰⁹ On the recent conclusion of an agreement on mutual recognition of the diplomas issued by the universities in Kosovo and Metohija see Government 2015: 12.

¹¹⁰ See the Preamble to the European Charter for Regional or Minority Languages. According to the authorities, 561 502 children received their instruction in one out of nine different languages of national minorities at primary schools in 2016/2017. Another 11 509 learned one of 14 languages of national minorities as an elective course.

¹¹¹ Cf. Government 2013: 29.

94. With regard to the implementation of the second interim follow-up recommendation – to ensure that the training provided to the judiciary on issues of racism and racial discrimination is strengthened in order to, inter alia, ensure better sentencing practices for racist crimes – the authorities have informed ECRI that further trainings have been organised and that additional improvements are dealt with in the Action Plan for Chapter 23 of the EU accession negotiations. However, ECRI considers that there is still no systematic approach to the training of the judiciary on hate speech and hate crime, and that this training has not yet led to a noticeable improvement in the sentencing practice for racist crimes (see §§ 47 et seq. of this report). ECRI therefore is of the opinion that this recommendation has not been fully implemented.
95. ECRI considered in its conclusions on Serbia that the third interim follow-up recommendation – on the issuing of identity documents for Roma - had been fully implemented.

2. Policies to combat discrimination and intolerance vis-à-vis LGBT¹¹²

- Data

96. In Serbia, there are no official data on LGBT persons, their living conditions and the discrimination they suffer. Research shows that prejudice against LGBT persons is widespread¹¹³: 80% of the total population would not want to have an LGBT person as neighbour and only 18% state that they know and interact with an LGBTI person. 26% say that they would, upon discovering a friend or neighbour to be LGBTI, stop communicating with him/her; 24% would try to find a cure for him/her. 72% of Serbian LGBTI persons said that they have been psychologically abused, 51% have been discriminated and 23% have suffered physical violence.¹¹⁴ Security is a daily concern for LGBT persons and has a strong impact on their lives.¹¹⁵ Against this background, 63% of Serbian gay men talked about suicidal thoughts in the past (23.9% of the Total population) and 9% are currently thinking about suicide.¹¹⁶

- Legislation and policies

97. The Anti-Discrimination Strategy for 2013-2018 and the corresponding action plan aim to ensure the observance of the constitutional principle of non-discrimination and to curb the high level of prejudice. They contain measures to improve the legislative framework, to combat discriminatory practice and structural discrimination, and to promote a culture of tolerance among the general public.¹¹⁷
98. ECRI is pleased to note that the strategy provides for extensive legal amendments. First of all, ECRI considers that sexual orientation and gender identity should be introduced as prohibited grounds into all criminal law provisions on hate speech and violent hate crime (see the recommendation in § 7) and that sexual orientation should be included in the list of prohibited discrimination grounds in Article 5 of the recent law on police.¹¹⁸ The general preventive effect of such amendments would be a strong signal to the general public that any violence and hate speech towards LGBT persons is unacceptable. At the same time, such amendments would make it very clear to

¹¹² For terminology, see the definitions set out in CommDH 2011.

¹¹³ See also §§ 20 and 59.

¹¹⁴ NDI et al. 2015; see also § 20 of this report.

¹¹⁵ Government 2013: 41.

¹¹⁶ Pinknews 2013.

¹¹⁷ Government 2013: 13 and 39 et seq.

¹¹⁸ Gayten 2016.

the police and prosecution that special focus needs to be put on homo- and transphobic hate crime and that all allegations of such offences need to be investigated thoroughly.

99. In the field of civil law, ECRI notes with satisfaction that the action plan contains, under 4.3.2, the measure to draft a law on registered partnerships for same-sex couples by the end of 2017. An initial proposal has been presented by civil society¹¹⁹ and a public hearing took place in 2015. ECRI considers that such legislation is of great importance for realising LGBT persons' right to equality and encourages the authorities to respect the timeline for the implementation of this measure.
100. For transgender persons it is of great importance to have access to gender reassignment treatment. There should also be a legal regulation in place for changing their name and gender in a quick, transparent and accessible way. ECRI therefore takes positive note of the strategy's measure to include in legislation effective procedures for these issues; at the same time, ECRI draws the authorities' attention to the international standards in this field and the trend to make these changes possible without imposing measures deeply interfering with transgender persons' right to private and family life, such as gender reassignment surgery, heavy hormonal treatment, sterilisation, divorce and extensive psychiatric examination.¹²⁰
101. ECRI recommends that the authorities implement within the planned timelines their anti-discrimination strategies' measures on introducing registered partnerships for same-sex couples and on regulating the change of name and gender of transgender persons.
102. Given the considerable potential for domestic and other kinds of violence against LGBT persons, ECRI considers that the authorities should put a special focus on improving the personal security of LGBT persons. Schools, universities, the military and other security forces should be aware of bullying and create a safe environment in which young LGBT persons receive the information, assistance and protection they need in the particularly difficult phase of their coming out. Awareness-raising on HIV should be re-intensified and a sufficient number of shelters should be established, in which LGBT persons, and in particular transgender persons, can find a safe place, in particular during their coming out or transition.
103. Statistics show that a considerable proportion of discrimination against LGBT persons is committed by civil servants belonging to the police, the military, health services and the judiciary; discrimination at school is also frequent.¹²¹ This kind of intolerance is particularly harmful, as it often deeply interferes with LGBT persons' personal and family life; it is also considered a severe form of discrimination under Article 13.2 LPD. Against this background, ECRI takes positive note of a considerable number of training measures for police and social welfare staff on LGBT issues. At the same time, it considers that such training needs to be continued and expanded to other sectors such as health services and the military. The authorities should also introduce LGBT issues into mandatory school programmes, remove homo- and transphobic content from schoolbooks and ensure that teachers and social workers in schools be sensitised to and trained in LGBT matters.
104. Finally, ECRI regrets that public officials do not always contribute to the strategy's goal of promoting a culture of tolerance towards LGBT persons. A prominent example of hate speech from the former prime minister has already

¹¹⁹ Belgrade Centre for Human Rights 2016: 329.

¹²⁰ ECtHR 2016; CoE, CM 2010; see also recent legislation in this field in Denmark, Malta and Norway.

¹²¹ NDI 2015: 14.

been mentioned in § 23.¹²² On the other hand, there are also signs of improvement, such as the recent appointment of an openly gay minister. Building on this, ECRI considers that the highest representatives of the country need to become permanent role models with regard to improving attitudes towards LGBT persons. The initiation of dialogue with religious leaders in the country, with a view to promoting greater understanding and tolerance towards LGBT persons, would also represent an important step forward.

105. ECRI recommends that the authorities create a safe environment for LGBT persons, that they continue and expand training of public servants on LGBT issues, introduce LGBT issues into mandatory school programmes and that the authorities and high representatives of the state become role models for improving attitudes towards LGBT persons.

¹²² Another recent example of a derogatory statement is the widely reported one made by the current prime minister after the 2016 LGBT parade, that he would rather go to the wedding of the former defence minister's son than join the Pride march, as there were more guests, Media Diversity Institute 2016.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Serbia are the following:

- ECRI recommends that the Serbian Parliament and Government adopt codes of conduct, which prohibit the use of hate speech, provide for suspension of mandate and other sanctions for breach of their provisions and establish effective reporting channels.
- ECRI recommends that the authorities give high priority to hiring a proportionate number of Roma and members of other minorities to the civil service and ensure that they benefit from equally stable working conditions as other civil servants.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 7) ECRI recommends that the Serbian authorities bring their criminal law into line with its General Policy Recommendation No. 7; in particular they should (i) include in all criminal law provisions aimed at combating racism and intolerance the grounds of skin colour, language, citizenship, ethnic origin, sexual orientation and gender identity, (ii) criminalise incitement to violence, (iii) criminalise incitement to hatred, discrimination and violence against persons or groupings of persons living outside Serbia, (iv) criminalise all denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes and (v) criminalise the creation or the leadership of a group which promotes racism, support for such a group, and participation in its activities.
2. (§ 15) ECRI recommends that the Serbian authorities bring their anti-discrimination legislation fully into line with ECRI's General Policy Recommendation No. 7; in particular they should (i) ensure that it is possible to take legal action in cases of indirect discrimination even before actual disadvantages occur, (ii) clarify the scope of the general prohibition of discrimination in the Serbian Law on the Prohibition of Discrimination, (iii) introduce a legal provision placing all public authorities under a positive duty to promote equality and to prevent discrimination in carrying out their functions, (iv) enact legislation on free legal aid including free representation by a lawyer, (v) provide that all discriminatory provisions in individual or collective contracts, agreements or other regulations should be amended or be null and void and (vi) provide for an obligation to suppress public financing of all organisations, including political parties, which promote racism.
3. (§ 17) ECRI recommends that the Serbian authorities give the Commissioner for the Protection of Equality the powers to take up issues of discrimination ex officio and to request the production of documents and other elements, and to seize such items.
4. (§ 34) ECRI recommends that the Serbian Parliament and Government adopt codes of conduct which prohibit the use of hate speech, provide for suspension of mandate and other sanctions for breach of their provisions and establish effective reporting channels.
5. (§ 38) ECRI recommends that the Serbian authorities initiate intensive training for journalists on the journalists' Code of Ethics, which could be carried out, for example, by the Press Council, the Regulatory body for electronic media and the Commissioner for the Protection of Equality.
6. (§ 42) ECRI recommends (i) that the authorities ensure full independence of the Regulatory Body for Electronic Media (REM) and refrain from any political influence on this body, (ii) that the Press Council be provided with the power to take up cases ex officio, (iii) that the authorities ensure that the Press Council's decisions are followed up with financial sanctions, such as, for example, the cutting of public subsidies, (iv) that the REM, the Press Council and the Commissioner for the Protection of Equality take up all cases of hate speech in the media, (v) that these institutions impose effective, proportionate and dissuasive sanctions (vi) and widely publicise their decisions.
7. (§ 45) ECRI recommends that the Serbian authorities develop a strategy on combating cyber hate speech, without encroaching on the editorial independence of the media.

8. (§ 50) ECRI recommends that the Serbian police and prosecution services designate, throughout the country, contact persons for vulnerable groups targeted by hate speech and hate crime. These contact persons should receive continuing training on the investigation of hate speech and crimes and build up and maintain, together with the Commissioner for the Protection of Equality, regular dialogue with these groups in order to ensure adequate reporting, investigation and prosecution of hate speech.
9. (§ 52) ECRI recommends that the Serbian authorities establish and operate a system for recording and monitoring racist, homo- and transphobic incidents and the extent to which these incidents are brought before prosecutors and are eventually qualified as racist, homo- or transphobic offences. The police and prosecution services should investigate all reported cases of hate speech promptly and thoroughly and work towards effective and dissuasive punishment.
10. (§ 54) ECRI recommends that the Commissioner for the Protection of Equality and the Ombudsperson continue assisting victims of hate speech to bring cases before the courts.
11. (§ 57) ECRI strongly recommends that the authorities take immediate action to investigate, prosecute and punish racist behaviour of sports fans. It further recommends that the authorities take action to ban racist sports fan clubs.
12. (§ 64) ECRI recommends that the police and prosecution services ensure that investigations are opened in all cases of racist, homo- and transphobic violence, in particular when there is evidence pointing to the possible application of Article 54a of the Criminal Code on aggravating circumstances. Explicit reference to Article 54a of the Criminal Code should be made by the prosecution in the indictments.
13. (§ 68) ECRI recommends that the Serbian authorities efficiently implement the National Strategy for the Prosecution of War Crimes and that they publicly acknowledge that the Srebrenica massacres constituted genocide.
14. (§ 76) ECRI recommends that the Serbian authorities designate the central, provincial and local authorities that are responsible for the achievement of the goals and the implementation of the related measures of the Roma strategy, that they designate the necessary human and financial resources for their implementation, that they set up a strong monitoring procedure and structure and that they ensure that the specific needs of Roma displaced from Kosovo are met.
15. (§ 80) ECRI recommends that the Serbian authorities significantly and annually increase pre-school attendance rates among Roma children and in particular among those living in Roma settlements. At the same time, they should ensure that they acquire sufficient mastery of the future language of instruction prior to entering primary school.
16. (§ 82) ECRI recommends that the authorities, in particular the school authorities, focus on objective 5.1 of the Roma action plan to ensure full inclusion of Roma children in pre-school, primary and secondary education, that they swiftly implement the related measures and that they fix ambitious goals for core indicators such as increasing enrolment and completion rates in primary and secondary school.
17. (§ 85) ECRI recommends that the Serbian authorities continue putting special focus on implementing the objectives and measures on Roma housing in section 5.2 of the Roma strategy and solicit for this purpose funding from international donors.

18. (§ 89) ECRI recommends that the Serbian authorities develop a system of integration indicators and strengthen the collection of equality data, while ensuring the principles of confidentiality, voluntary self-identification and informed consent. This data should be used to improve integration and reduce discrimination against minorities in fields such as education and employment.
19. (§ 91) ECRI recommends that the authorities give high priority to hiring a proportionate number of Roma and members of other minorities to the civil service and ensure that they benefit from equally stable working conditions as other civil servants.
20. (§ 101) ECRI recommends that the authorities implement within the planned timelines their anti-discrimination strategies' measures on introducing registered partnerships for same-sex couples and on regulating the change of name and gender of transgender persons.
21. (§ 105) ECRI recommends that the authorities create a safe environment for LGBT persons, that they continue and expand training of public servants on LGBT issues, introduce LGBT issues into mandatory school programmes and that the authorities and high representatives of the state become role models for improving attitudes towards LGBT persons.

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