

# **ECRI REPORT ON BULGARIA**

**(fifth monitoring cycle)**

Adopted on 19 June 2014

Published on 16 September 2014

COUNCIL OF EUROPE



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ECRI Secretariat  
Directorate General II - Democracy  
Council of Europe  
F-67075 STRASBOURG Cedex  
Tel.: + 33 (0) 3 90 21 46 62  
Fax: + 33 (0) 3 88 41 39 87  
E-mail: [ecri@coe.int](mailto:ecri@coe.int)

[www.coe.int/ecri](http://www.coe.int/ecri)

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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, anti-Semitism and intolerance.

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

ECRI's country-by-country monitoring deals with all member States of the Council of Europe 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 and those of the third round at the end of 2007, and those of the fourth round will be completed at 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 at 21 March 2014; 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 fourth report on Bulgaria on 20 June 2008, progress has been made in a number of fields.**

Amendments to the Criminal Code introduced enhanced penalties for murder and causing bodily harm committed with hooligan, racist or xenophobic motives.

In March 2012, the Bulgarian Parliament approved a National Roma Integration Strategy (NRIS). It requires every region to develop and adopt a regional strategy and action plan for the integration of Roma up to the year 2020.

A National Strategy on Migration, Asylum and Integration was adopted for the years 2011 to 2020. It aims to establish an effective national migration and integration management policy.

Amendments to the Public Education Act introduced obligatory pre-schooling for two years, with the objective of ensuring an equal start for every child and early socialisation and development of skills required for entry to the first grade.

The Centre for Educational Integration of Children and Pupils from Ethnic Minorities continues to fund projects in schools, kindergartens and municipalities which focus on providing equal access to quality education for children from ethnic minority groups, as well as preserving and developing their cultural identity.

A change in the law in 2012 allows illegally built houses to be legalised and no longer subject to demolition leaving Roma families homeless.

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

The authorities have not introduced a provision in the Criminal Code making racist motivation an aggravating circumstance for all criminal offences. Bulgarian legislation does not provide for an obligation to suppress public financing of organisations or political parties which promote racism. Hate speech or violence targeting sexual orientation or gender identity is not recognised as an offence in the Criminal Code.

Racist and intolerant hate speech in political discourse is escalating; the main target is now refugees. In the media and on Internet, expressions of racism and xenophobia against foreigners, Turks and Muslims are commonplace, as is abusive language when referring to Roma. There is also a significant amount of hate speech targeting sexual orientation. A growing number of ultra-nationalist/fascist groups and political parties operate in Bulgaria.

The authorities rarely voice any counter-hate speech message to the public. Few cases of hate speech have reached court and the conviction rate is low. The system in place for sanctioning violations of the relevant legislation relating to media services is ineffective.

Racist violence continues to be perpetrated against Roma, Muslims, Jews and non-traditional religious groups and their property. It is seldom prosecuted under the criminal law provisions specifically enacted for this purpose; very often hooliganism is invoked instead.

The Bulgarian NRIS lacks mechanisms for collecting and disseminating disaggregated data and fails to provide for sufficient funding. Consequently, few positive results have been achieved so far.

Low achievement in education persists and drop-out rates continue to be disproportionately high among Roma pupils. Surveys demonstrate that discriminatory attitudes are endemic in the Bulgarian educational system.

The National Programme for the Integration of Refugees does not function well, primarily due to lack of adequate funding. The decision of the Government in October 2013 to build a temporary 30km-long barrier fence on the border with Turkey could jeopardise Bulgaria's international obligations.

There is no official data on the LGBT population in Bulgaria and no specific legislation regulating gender reassignment.

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

Bulgaria should ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.

The authorities should insert a provision in the Criminal Code expressly stating that racist motivation for any ordinary offence constitutes an aggravating circumstance. Sexual orientation and gender identity should be included in all the articles of the Criminal Code addressing hate speech and hate crime.

The Anti-discrimination Act should be amended to include gender identity as a ground of discrimination. It should also include an obligation to suppress public financing of organisations or political parties which promote racism.

The Commission for Protection against Discrimination should produce and publish information about discrimination, and explaining the procedures for discrimination complaints, in a variety of languages used in the country and disseminate it widely\*.

The Council for Electronic Media should be encouraged to take action in all cases of dissemination of hate speech. It should raise the fines for violations of the provisions of the Radio and Television Act relating to hate speech so that they act as a real deterrent and make greater use of the possibility of revoking broadcasting licences where appropriate.

The Bulgarian authorities should urgently organise an awareness-raising campaign promoting a positive image of and tolerance for asylum seekers and refugees and ensuring that the public understands the need for international protection.\*

Adequate funding should be allocated for the effective implementation of the NRIS.

The authorities should work closely with the UNHCR to extend in time and improve the integration package for refugees. They should remove any border fences which create physical barriers to refugees seeking international protection.

Legislation should be developed on gender recognition and gender reassignment, in line with international standards and expertise. An action plan should be adopted to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care.

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\* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism<sup>1</sup> and racial discrimination<sup>2</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. In both its third and fourth reports, ECRI recommended that Bulgaria ratify Protocol No. 12 as soon as possible. Bulgaria has still neither signed nor ratified this instrument. No explanation was given as to any possible obstacles. ECRI was informed only that the authorities were waiting to see how the case law of the European Court of Human Rights developed before committing themselves. ECRI points out that the notion of discrimination has been interpreted consistently in the case law of the European Court of Human Rights. The Court has said that it does not see any reason to depart, in the context of Article 1 of Protocol No. 12, from this settled interpretation<sup>3</sup>. ECRI considers ratification of this instrument, which provides for a general prohibition of discrimination, to be vital in combating racism and racial discrimination.

2. ECRI reiterates its recommendation that Bulgaria ratifies Protocol No. 12 to the European Convention on Human Rights as soon as possible.

##### - Criminal law<sup>4</sup>

3. Article 162 (1) of the Criminal Code criminalises the advocating of or incitement to discrimination, hatred or violence based on race or national or ethnic origin through speech, print or other mass media, electronic information systems or other means. Article 162 (2) criminalises the use of violence against another person or damage to his/her property on account of his/her race, national or ethnic origin, religion or political opinion. Article 162 (3) covers the leadership of an organisation or group that aims to commit the acts under Article 162 (1) and (2). Membership in such an organisation or group is criminalised under Article 162 (4). Article 163 punishes those who participate in a crowd to attack the population, individuals or their property on account of their national, ethnic or racial affiliation.

4. ECRI notes that the list of grounds under Articles 162 (1) and 163 do not include religion. Although preaching hatred on religious grounds through speeches, publications or other media, electronic information systems or otherwise is punished under Article 164 (1), there is no reference in this provision to incitement to religious discrimination or violence. In addition, colour<sup>5</sup>, language and citizenship are also not mentioned as grounds in Articles 162 and 163. ECRI was assured by the authorities that colour, as a component of “race”, would be

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Case of Maktouf and Damjanović v. Bosnia and Herzegovina [GC], nos. 2012/08 and 34179/08, 18 July 2013, § 81.

<sup>4</sup> Criminal law aspects relating to LGBT issues are dealt with in the section on Topics specific to Bulgaria - Policies to combat discrimination and intolerance against LGBT persons.

<sup>5</sup> See also the Report from the Commission to the European Parliament and the Council on the Implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, Brussels, 27.1.2014, COM(2014) 27 final.

covered, and language would be covered under national or ethnic origin. ECRI considers, nevertheless, that these elements should be specifically mentioned, as per its GPR No. 7 § 18 a.

5. ECRI recommends that the gaps in the protection offered under Article 164 (1) of the Criminal Code should be filled and that religion should be included as a ground in Articles 162 (1) and 163. Colour, language and citizenship should be included as grounds for the commission of the offences set out in Articles 162 and 163.
6. ECRI notes also that the Criminal Codes covers, in Article 144, threats against a person or his/her property, but it does not specifically criminalise threats against a person or grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, as per GPR No. 7 § 18 c.
7. ECRI recommends that the offence of threats against a person or group of persons on the grounds of their race, colour, language, religion, nationality or national or ethnic origin be included in the Criminal Code.
8. ECRI further notes that there is no reference to the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, as it called for in its GPR No. 7 § 18 d.
9. ECRI recommends that the Criminal Code be amended to include a provision against the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.
10. ECRI's GPR No. 7 § 18 h recommends States to criminalise racial discrimination in the exercise of one's public office or occupation. As far as ECRI is aware, this element does not appear in the Bulgarian Criminal Code.
11. ECRI recommends that racial discrimination in the exercise of one's public office or occupation be criminalised.
12. Moreover, in respect of the above-mentioned offences, ECRI notes that legal persons cannot be held criminally responsible, contrary to GPR No. 7 § 22. However, administrative sanctions (fines) can be imposed on legal persons under the Act on Administrative Violations and Sanctions.
13. ECRI encourages the authorities to consider the possibility of providing for the criminal liability of legal persons for racially motivated offences.
14. In its fourth report, ECRI again recommended that the Bulgarian authorities insert a provision in the Criminal Code expressly stating that racist motivation for any ordinary offence constitutes an aggravating circumstance. The authorities informed ECRI that when amendments were made to the Criminal Code in 2009 and 2011, higher penalties were introduced for the specific offences motivated by racism under Article 162 rather than introducing racist motivation as an aggravating circumstance for all offences. Moreover, following the amendments of 2011, specific enhanced penalties for murder committed with hooligan, racist or xenophobic motives (Article 116 (1) subsection 11) and causing bodily harm with hooligan, racist or xenophobic motives (Article 131 (1) subsection 12) were introduced. While these provisions represent a step forward, they are still not fully

in line with ECRI's GPR No. 7 § 21 which provides that racist motivation for all criminal offences should constitute an aggravating circumstance<sup>6</sup>.

15. ECRI once again recommends that the Bulgarian authorities insert a provision in the Criminal Code expressly stating that racist motivation for any ordinary offence constitutes an aggravating circumstance.

- **Civil and administrative law**<sup>7</sup>

16. The Anti-discrimination Act of 2004 (amended in 2006 and 2012) regulates protection against all forms of discrimination. ECRI notes with satisfaction that it is widely considered to be a very good law. The analysis below focuses only on areas which could be improved in order for it to function as a comprehensive and effective tool against racial discrimination.

17. Article 4 clearly defines direct and indirect discrimination "on the grounds of sex, race, nationality, ethnic origin, citizenship, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by the law, or by international treaties to which the Republic of Bulgaria is a party". ECRI notes that there is no specific reference to colour and language, as per its GPR No. 7 § 1. Although the authorities confirmed that colour would be covered under "race" and language could be covered under the headings of nationality, ethnic origin or citizenship, ECRI considers that, on the basis of the general principle of legal certainty, these elements should be expressly mentioned in the article (see also §§ 4-5 of this report).

18. ECRI recommends that colour and language be included as grounds in Article 4 of the Anti-discrimination Act, in accordance with its General Policy Recommendation No. 7 § 1.

19. ECRI notes that Article 5 of the Act prohibits, inter alia, harassment, incitement to discriminate and racial segregation. However, there is no reference to discrimination by association and announced intention to discriminate, which, according to ECRI's GPR No. 7 § 6, should also be considered by law as forms of discrimination<sup>8</sup>.

20. ECRI recommends that discrimination by association and announced intention to discriminate be included as forms of discrimination in the Anti-discrimination Act.

21. ECRI further notes that there is no mention in the Act on the placing of public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination, as recommended in its GPR No. 7 § 9<sup>9</sup>. ECRI considers that the law should also provide that the violation of this condition may result in the termination of the contract, grant or other benefits.

22. ECRI recommends that the Anti-discrimination Act expressly mentions that public authorities are under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-

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<sup>6</sup> Article 54 of the Criminal Code on sentencing does not mention racist motivation as an aggravating circumstance.

<sup>7</sup> Civil and administrative law aspects relating to LGBT issues are dealt with in the section on Topics specific to Bulgaria - Policies to combat discrimination and intolerance against LGBT persons.

<sup>8</sup> ECRI refers to the Explanatory Memorandum to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, §§ 15-16.

<sup>9</sup> ECRI also refers to its General Policy Recommendation No. 14 on combating racism and racial discrimination in employment, § 1(f), and to the explanatory memorandum section on public procurement.

discrimination and that the violation of such condition may result in the termination of the contract, grant or other benefits.

23. The Act does not provide for discriminatory provisions which are included in individual or collective contracts or agreements, internal regulations of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, to be amended or declared null and void, as per ECRI's GPR No. 7 § 14.
24. ECRI recommends that a provision be inserted into the Anti-discrimination Act to the effect that discriminatory provisions which are included in individual or collective contracts or agreements, internal regulations of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, should be amended or declared null and void.
25. Finally, ECRI notes that neither the Anti-discrimination Act nor other legislation (such as the Political Parties Act) provide for an obligation to suppress public financing of organisations or political parties which promote racism, as recommended in its GPR No. 7 § 16. ECRI considers that such a provision is very important and would be much needed in Bulgaria (see ECRI's findings on racism in political discourse highlighted in the section on Hate speech).
26. ECRI strongly recommends that the authorities insert a provision into the Anti-discrimination Act providing for an obligation to suppress public financing of organisations or political parties which promote racism.

- **Independent authorities**

27. The Commission for Protection against Discrimination (hereafter the Commission) was set up in 2005. It is, according to Article 40 of the Anti-discrimination Act, "an independent specialised state body for prevention of discrimination, protection against discrimination and ensuring equal opportunities".
28. As concerns independence, according to Article 41 (1) of the Act, five of the nine members of the Commission, including the Chair and Deputy Chair, are elected by Parliament and four members are appointed by the President. Since the Act contains no express ban on members receiving instructions, ECRI considers that there are insufficient guarantees as to the independence of the Commission as a whole. Despite assurances that the members, who include former members of Parliament, fulfil their tasks and operate in a politically independent manner, ECRI is of the view that the Act should contain a provision expressly stating that they may not receive instructions.
29. ECRI recommends that a provision be inserted into the Anti-discrimination Act expressly prohibiting members of the Commission for Protection against Discrimination from receiving instructions.
30. ECRI notes that the provisions of the Anti-discrimination Act relating to the Commission (§§ 40-70) are in line with its GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at the national level. The only element which is not specifically mentioned in the Act is the competence to promote and contribute to the training of certain key groups, but ECRI is aware that this is carried out in practice. The provisions of the Act also align with ECRI's GPR No. 7 § 24 which calls for the establishment of a specialised body to combat racism and racial discrimination and sets out its competences. ECRI concludes with satisfaction that, apart from one aspect on which it has made a

recommendation in § 29, the general legal framework for a national specialised body is complete.

## 2. Hate speech<sup>10</sup>

### - Racism in political and other forms of public discourse

31. In its fourth report, ECRI strongly recommended that the Bulgarian authorities ensure that the legislation on incitement to racial hatred is applied to all politicians making racist and/or xenophobic speeches or remarks. ECRI notes that racist and intolerant hate speech in political discourse continues to be a serious problem in Bulgaria and the situation is worsening. The main targets of racist hate speech are Roma, Muslims, Jews, Turks, and Macedonians. The last election campaign was marked by strong anti-Gypsyism. There has been a pronounced increase in incitement to Islamophobia. Much of the problem centres on one nationalist political party, Ataka, which is represented in Parliament<sup>11</sup>. Its leader is well-known for his out-spoken racist views. He has rallied against the “gypsification” of Bulgaria, systematically linking Roma with criminals; he has called for a ban on the construction of mosques to halt the spread of Islam and he has published two antisemitic books (see also the section on Racist violence).
32. In addition, several other smaller ultra-nationalist/fascist political parties and groups operate in Bulgaria, including NFSB (National Front for Salvation of Bulgaria)<sup>12</sup>, VMRO-BND (Internal Macedonian Revolutionary Organisation - Bulgarian National Movement) and BNU (Bulgarian National Union). VMRO-BND is notorious for systematically propagating hatred against neighbouring peoples in the Balkans as well as anti-Gypsy propaganda. Yet another extreme nationalist group, the Bulgarian Nationalist Party, attempted to register in November 2013 as a political party. Its members have come together from groups such as Blood and Honour, but also from other political parties including Ataka and VMRO-BND. ECRI is deeply concerned about the ease of official recognition of extremist parties as well as the possibility for them to receive State subsidies (see also §§ 25-26). It seems also that there are a growing number of such groups which engage in racist and intolerant hate speech.
33. ECRI strongly recommends that the authorities keep a close watch over the numerous extremist groups and political parties operating in Bulgaria and take swift action against any criminal activities in which they engage, including incitement to discrimination, hatred and violence.
34. The situation throughout Bulgaria became extremely tense in the final months of 2013 with an explosion of xenophobic hate speech against refugees who entered the country in large numbers as a consequence of the conflict in Syria. Certain politicians, including the Minister of Interior, sent strong messages that asylum seekers were a burden on society<sup>13</sup> and dangerous<sup>14</sup>. This led to a wave of

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<sup>10</sup> This section covers racist and homo/transphobic speech. For a definition of “hate speech” see Recommendation No. R (97) 20 of the Committee of Ministers to the member States on “hate speech”, adopted on 30 October 1997.

<sup>11</sup> Following the 2013 elections, Ataka entered Parliament for the third time with 7.39 % of the votes and 23 seats (out of a total of 240).

<sup>12</sup> NFSB received 3,7% of the vote in the latest election which prevented them from winning seats in the Parliament by a very narrow margin, since the threshold is 4%.

<sup>13</sup> Amnesty International Bulgarie : agressions racistes contre des migrants, jeudi 14 novembre 2013, <http://balkans.courriers.info/article23629.html>. In this article, the Minister of Interior is alleged to have declared that “in no country, the presence of refugees on its territory has ever been an advantage”.

<sup>14</sup> A migrant who stabbed a Bulgarian girl was cited erroneously in the media as being a refugee, thus exacerbating prejudice against refugees; a member of Parliament of the Ataka party referred to refugees as assassins, savages and cannibals (Bulgarie : des grillages et des barbelés pour arrêter les migrants, jeudi 14 novembre 2013, <http://balkans.courriers.info/article23622.html>).

protests and manifestations of anger towards the setting up of additional refugee camps. In September 2013, demonstrations were organised by VMRO-BND against the influx of Syrian refugees<sup>15</sup>. Many of the above-mentioned groups have been implicated in inciting hatred which led to acts of violence (see the section on Racist violence).

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

35. ECRI notes that the situation concerning hate speech on the Internet and in the media has not improved since its last report and, according to several sources, has in fact deteriorated. Expressions of racism and xenophobia against foreigners, Turks and Muslims are commonplace, as is abusive language when referring to Roma. Indeed, ECRI has heard that an open anti-Roma campaign is being waged by the media in which Roma are presented as a demographic threat to Bulgaria. There is also a significant amount of hate speech targeting sexual orientation in the media.

- **The authorities' response**

36. As already stated, hate speech is criminalised under Article 162 (1) of the Criminal Code (advocating of or incitement to discrimination, hatred or violence based on race, citizenship or ethnic origin). In addition, Article 164 (1) punishes the preaching of hatred on religious grounds. Thus, the criminalisation of hate speech is limited to the grounds of race, citizenship, ethnic origin and religion. Hate speech targeting sexual orientation or gender identity is not recognised as an offence in the Criminal Code.

37. According to the report *Hate Crime in the OSCE Region: Incidents and Responses 2012*, data relating to hate speech are collected by the Ministry of Interior (Central Police Statistics), the Prosecutor's Office, the Supreme Judicial Council and the Court of Cassation. Crime statistics are recorded according to the relevant article of the Criminal Code and, as concerns Article 162 (1), are not broken down according to the above-mentioned motives. Bias motivation is determined by the prosecution and the court.

38. The authorities informed ECRI that from January 2008 to September 2013, 55 pre-trial proceedings were initiated under Article 162 (including both paragraph 1 on incitement and paragraph 2 on the use of violence or damage to property). Eleven of these went on to trial and ten persons were convicted. Under Article 164, out of a total of 56 pre-trial proceedings which were initiated, none resulted in a conviction. ECRI is astonished that so few cases of hate speech have reached court and that the conviction rate is so low. It regrets that the criminal law provisions in force to combat hate speech are rarely invoked and hardly ever successfully. This sends a strong message to the public that hate speech is not serious and can be engaged in with impunity.

39. ECRI strongly recommends that the authorities take urgent steps to ensure that anyone who engages in hate speech as defined in Articles 162 (1) and 164 (1) of the Criminal Code is duly prosecuted and punished.

40. ECRI notes that the Sofia City Prosecutor has tried to have the Ataka party banned under the Political Parties Act and to gather evidence in view of criminal action against its leader for incitement to ethnic and religiously motivated hatred. However, it regrets that these attempts have not succeeded.

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<sup>15</sup> Bulgarie : manifestation des nationalistes du VMRO contre l'afflux de réfugiés syriens, mercredi 25 septembre 2013 ; <http://balkans.courriers.info/article23254.html>.

41. In its fourth report, ECRI encouraged the Bulgarian authorities to make the media aware, without undermining their editorial independence, of the need to ensure that the information they provide does not help to breed a climate of hostility towards members of ethnic and religious minorities and to support any initiatives taken in this field. It also reiterated its recommendation that the Bulgarian authorities make every effort to prosecute and punish journalists who incite racial hatred and recommended that the authorities provide the Council for Electronic Media with the human and financial resources needed to ensure that its members are made more aware of issues pertaining to racism and incitement to racial hatred, particularly through appropriate training.
42. ECRI notes that the Radio and Television Act of 2002 contains several provisions prohibiting incitement to hatred based on “race, sex, religion or nationality”<sup>16</sup> but regrets that there is no obligation for media service providers to refrain from disseminating hate speech on the ground of sexual orientation.
43. ECRI recommends that the provisions of the Radio and Television Act relating to hate speech be amended to include the ground of sexual orientation.
44. The Council for Electronic Media (CEM), in its capacity as an independent regulator, has the task of supervising the activities of radio and television broadcasters for compliance with the above-mentioned Act and can issue sanctions for violations ranging from fines to revocation of broadcasting licences. The CEM monitors broadcasting on a regular basis. It also carries out targeted monitoring. In November 2013, for example, in response to the general negative climate against refugees, it decided to monitor the way refugees were portrayed in the media and issued a declaration warning media service providers that they would be held responsible for broadcasting hate speech against refugees. ECRI commends this action. In most cases, however, the CEM has been accused of passive monitoring and doing little in response to violations of the Act. ECRI was informed that from 2010 to 2013, 25 administrative procedures were initiated for breaches of the above-mentioned articles. Many of these related to religious or ethnic intolerance and concerned two television channels well-known for systematically disseminating hate speech (one is owned by the leader of Ataka). Most cases resulted in the imposition of a fine<sup>17</sup>.
45. ECRI concludes that the system in place for sanctioning violations of the relevant legislation relating to media services is ineffective. In view of the scale of hate speech in the media in Bulgaria, ECRI considers that the CEM should play a far greater role in punishing media service providers who disseminate hate speech. ECRI also considers that the fines are too low to act as a deterrent.
46. ECRI strongly recommends that the authorities encourage the Council for Electronic Media to take action in all cases of dissemination of hate speech. It should also be encouraged to raise the fines for violations of the provisions of the Radio and Television Act relating to hate speech so that they act as a real deterrent, as well as to make greater use of the possibility of revoking broadcasting licences where appropriate.

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<sup>16</sup> According to Article 8, “media services must not incite to hatred based on race, sex, religion or nationality”. Under Article 10, media service providers shall not allow “programmes which [...] incite to intolerance among citizens or hatred on grounds of race, sex, religion or nationality”. Article 17 states that media service providers shall be accountable for the content of the media services and shall not allow “the creation or distribution of any broadcasts inciting to national, political, ethnic, religious or racial intolerance”.

<sup>17</sup> 3 000 BGN for the first violation (1 533 EUR); if another violation occurs within one year, the fine doubles.

47. As regards awareness-raising for the media and appropriate training, ECRI understands that the CEM has organised round tables and seminars on professional ethics and values. Moreover, a dedicated meeting took place in April 2013 with NGOs and the CEM regarding hate speech in the Bulgarian media.
48. In addition to the insufficient criminal and administrative law response to hate speech, ECRI regrets that the authorities rarely voice any condemnation of it. Exceptionally, with regard to the surge of resentment against refugees stoked by certain public figures, the President and the Prime Minister issued a joint declaration condemning the acts committed against refugees inspired by xenophobia or racial hatred and appealing for solidarity. The Ombudsman also spoke up and issued a declaration asking the public to be tolerant. ECRI welcomes these steps but still considers that the authorities should be more proactive in diffusing tensions by sending a clear counter-hate speech message to the public by, for example, organising an awareness-raising campaign to promote a positive image of asylum seekers and refugees<sup>18</sup>.
49. ECRI strongly recommends that the Bulgarian authorities urgently organise an awareness-raising campaign promoting a positive image of and tolerance for asylum seekers and refugees and ensuring that the public understands the need for international protection.

### 3. Racist and homo/transphobic violence

50. In its fourth report, ECRI recommended that the Bulgarian authorities wage campaigns to encourage victims of racist violence to lodge complaints and to foster awareness of the seriousness of racist crime and of the fact that the perpetrators will be duly punished. ECRI notes that racist violence has escalated since its last report. It is not aware of any campaign being waged according to its recommendation.
51. As observed above, hate speech targeting refugees has resulted in actual violence against this group and persons perceived as belonging to this group. A young man believed to be of Turkish origin was reportedly mistaken for a refugee and brutally attacked by skinheads in November 2013.
52. A series of violent attacks against Roma began in September 2011 when a young boy was run over and killed by a car in which members of a local Roma family were travelling in Katunitsa. The European Roma Rights Centre and the media reported that between September 2011 and July 2012 at least three Romani individuals died following a racially motivated attack, six Romani individuals were stabbed and 17 were beaten<sup>19</sup>.
53. The Chief Mufti's Office has documented incidents of harassment and violence against the Muslim community, including threats against Muslim women with headscarves, setting dogs on them, spitting on them, throwing liquids on them; painting the walls of religious schools and mosques with the slogans *Death to the Turks* and *Bulgaria for the Bulgarians*; desecrating and setting fire to mosques; damage to mosque property; and physical attacks on imams and mosque guards. Some of these are clearly of a racist nature. On 20 May 2011, a group of 150 supporters of the political party Ataka organised a protest outside the Banya Bashi Mosque in Sofia against the use of loudspeakers to broadcast the call to

<sup>18</sup> A sociological survey conducted by the Mediana polling agency revealed a dramatic increase in xenophobic attitudes. In a series of separate questions put to respondents, one third think that refugees should all be expelled; 20% display a highly critical attitude and are adamant that "we should not help the refugees", while 42% insist that the refugees should be isolated in special camps (reported in the Bulgarian newspaper 24 Chasa, 25 November 2013).

<sup>19</sup> <http://www.errc.org/cms/upload/file/attacks-list-in-bulgaria.pdf>

prayer. They chanted insults and threw eggs, stones and bottles at the worshippers and set carpets on fire outside the mosque. Five worshippers were injured.

54. The Jewish community has reported an increased number of antisemitic incidents. In March 2010, the walls of the Jewish school in Sofia were painted with swastikas and slogans against the politics of Israel. In 2010, the Jewish cemetery in Shoumen was desecrated; the gravestones were broken and painted with swastikas. Also in 2010, synagogues in Burgas and Asenovgrad were set on fire and Jewish monuments in Pleven and Blagoevgrad were desecrated.
55. In July 2012, a bomb blew up a bus at Burgas Airport in which 40 Israeli tourists were travelling; seven people died including the suicide bomber and 34 were injured. ECRI draws attention to this example of extreme racist violence while noting that the investigation revealed that the attack was planned outside the country and carried out by foreign citizens having no connection with Bulgaria.
56. Intolerance of non-traditional religions has also resulted in violence. During a rally organised by VMRO in April 2011, the House of Prayer of Jehovah's Witnesses in Burgas was violently attacked with stones and members of the church were physically beaten. Five people were injured.
57. Six cases of violence against LGBT people have been recorded by NGOs during recent years. They believe that there is under-reporting of this type of violence. The most serious case involved the homophobic murder of a medical student in the Borisova Gradina Park in September 2008. The two suspects who were arrested admitted to police that they had also beaten 10 other gay men as part of their aim to "clean the park". Transgender people in Bulgaria are also particularly vulnerable to violence because they are more visible as gender non-conforming. In June 2009, a transgender woman and a bisexual man survived a violent attack by a group of skinheads. The victims did not report the attack to the police because they believed, based on past experience and stories from other survivors of similar attacks, that the police would not investigate. Research conducted by the European Union's Fundamental Rights Agency (FRA) in all countries has repeatedly and consistently shown that victims of hate crime in general are reluctant to come forward and report<sup>20</sup>.

- **The authorities' response**

58. ECRI notes with regret that racist violence is seldom prosecuted under the criminal law provisions specifically enacted for this purpose. ECRI is not aware, for instance, of any prosecutions so far involving murder committed with racist motives or causing bodily harm with racist motives. As highlighted above, Article 162 (2) of the Criminal Code on the use of violence against another person or damage to his/her property on account of his/her race, nationality, ethnicity, religion or political opinion has resulted in very few convictions. Furthermore, in more than 110 documented cases of attacks on Muslim property or places of worship in the past 20 years, no perpetrator has ever been brought to justice (see also § 53).
59. It has been drawn to ECRI's attention that very often other provisions of the Criminal Code are invoked instead of those specifically targeting racist violence,

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<sup>20</sup> Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime, FRA Opinion – 02/2013, Framework Decision on Racism and Xenophobia, Vienna, 15 October 2013.

such as Article 325 on hooliganism<sup>21</sup>. For example, as concerns the above-mentioned case of an attack on the House of Prayer of Jehovah's Witnesses, six of the perpetrators were convicted of public order offences rather than religiously motivated violence. ECRI regrets this because it fails to send a clear message that racist violence is unacceptable and will be punished. Moreover, it contributes to the lack of information on the extent of racist violence in the country. ECRI stresses the importance of reliable data in order to counter this phenomenon effectively.

60. ECRI encourages the authorities to make full use of the Criminal Code provisions specifically targeting racist violence in all cases where this is appropriate.

61. The Criminal Code contains no specific response to violence targeting sexual orientation or gender identity. ECRI notes that in the case mentioned above concerning the homophobic killing of a student, the perpetrator was convicted of murder with hooligan motive. This demonstrates a willingness on the part of prosecuting authorities to apply an aggravating circumstance to this particular type of crime and highlights the lacuna in the Criminal Code. ECRI refers to the section below on Policies to combat discrimination and intolerance against LGBT persons.

62. Apart from the inadequate criminal law response to racist or homo/transphobic violence, ECRI also regrets the inertia of the authorities in condemning it (see also § 48). In the case of the Turkish man brutally attacked in the street in November 2013, as far as ECRI is aware no condemnation was issued by the Government even though the incident made the headlines and despite a Turkish minority party being part of the ruling coalition. In one notable exception, following the attack on Banya Bashi Mosque by members of the Ataka party in 2011, Members of Parliament from all parties (with the exception of Ataka) voted in favour of a declaration condemning the actions as an attempt to undermine religious peace and tolerance in Bulgaria.

#### **4. Integration policies**

63. In Bulgaria, existing integration policies are designed primarily for the Roma population, migrants in a regular situation and refugees.

##### **- Ethnic, religious and linguistic minorities**

64. As regards Roma, the Bulgarian Parliament approved, in March 2012, a National Roma Integration Strategy (NRIS) as required by the EU Framework for such strategies. This policy framework document includes an Action Plan that is to be implemented in two periods: the first, from 2012 to 2014, which completes the National Action Plan under the Decade of Roma Inclusion 2005-2015; and the second, from 2014 to 2020. The Action Plan is followed by a detailed Communication Plan, which has as its main goal "to change the negative attitudes of Bulgarian society towards the Roma community". Moreover, it requires every region to develop and adopt a regional strategy and action plan for the integration of Roma.

65. The main goal of the NRIS is "creating conditions for equitable integration of the Roma and Bulgarian citizens in a vulnerable situation belonging to other ethnic groups in the social and economic life by ensuring equal opportunities and equal access to rights, goods and services, by involving them in all public spheres and improving their quality of life, while observing the principles of equality and non-

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<sup>21</sup> Article 325: "A person who performs indecent acts, grossly violating the public order and expressing open disrespect for society, shall be punished for hooliganism by deprivation of liberty for up to two years or by probation, as well as by public censure".

discrimination". The NRIS clearly states from the outset that the term Roma is used as an umbrella to include both Bulgarian citizens in a vulnerable socio-economic condition who identify themselves as Roma and citizens in a similar situation, perceived by the majority as Roma, regardless of their self-identification. The authorities informed ECRI that this formulation was necessary to ensure that Roma, who have a tendency to identify themselves as Bulgarians, Turks or Romanians, have access to assistance provided by the NRIS. Indeed, fewer people declared themselves as Roma in the 2011 census than in the 2001 census, apparently due to fear of racism and racial discrimination, which, according to experts, does not reflect the genuine number of Roma in Bulgaria.

66. The NRIS incorporates into a single policy-document the objectives and measures contained in previous strategies and plans, including the Strategy for Educational Integration of the Children from the Ethnic Minorities, the Health Strategy for Disadvantaged Persons belonging to Ethnic Minorities, and the National Programme for Improvement of the Housing of Roma in the Republic of Bulgaria.
67. Six priorities are identified: education, health care, housing, employment, rule of law and non-discrimination, and culture and media. A set of goals is proposed for each priority and the Action Plan describes the tasks (122 different activities in total), responsible institutions, timeframe and financing. The NRIS refers to the active involvement of Roma in each area as a key success factor. In the field of housing, the NRIS has as its operational objective to improve the housing conditions and technical infrastructure. Ten tasks have been identified, including providing new plots for house construction in order to de-concentrate Roma neighbourhoods and building and providing social housing. The operational objective in the field of employment is to improve the access of Roma to the labour market and to raise Roma employment rates. Eight specific tasks are identified, such as educating unemployed persons in key competences and promoting entrepreneurship and starting up and managing a business. ECRI addresses the Roma integration policy in the area of education in Section II on Country Specific Topics. The National Council for Cooperation on Ethnic and Integration Issues (see below) is the governmental structure responsible for implementation, monitoring and evaluation.
68. As for Bulgaria's other ethnic, religious or linguistic minorities, ECRI is not aware of any recent integration policies targeting them specifically, although there are complaints about prejudice and discrimination and, in the case of Macedonians and Pomaks, deep discontent about their non-recognition as national minorities<sup>22</sup>. Nonetheless, it notes the existence of the National Council for Cooperation on Ethnic and Integration Issues (NCCEII)<sup>23</sup>, which is a consultative and coordinating body assisting the Government in formulating policies on the integration of such minorities (excluding Macedonians and Pomaks<sup>24</sup>). The NCCEII consists of 64 members, including the Deputy Prime Minister (Chair), deputy ministers of all ministries, representatives of 46 NGOs from six ethnic groups, including the

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<sup>22</sup> ECRI recalls that these issues are also dealt with by the Advisory Committee on the Framework Convention for the Protection of National Minorities, whose Third Opinion on Bulgaria is in the process of adoption.

<sup>23</sup> Until April 2011, it was known as the National Council for Cooperation on Ethnic and Demographic Issues (NCCEDI).

<sup>24</sup> Bulgarians of Macedonian origin and Pomaks are not members of the NCCEII since Bulgaria does not recognise them as national minorities. For further details, ECRI refers to the Second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on Bulgaria, adopted on 18 March 2010, Strasbourg 23 January 2012, FCNM/II(2012)001.

Jewish, Roma and Turkish communities, as well as organisations working in the field of minority issues.

- **Non-nationals**

69. In its fourth report, ECRI recommended that the authorities pay special attention to the situation of immigrants in Bulgaria, in order to ensure that they are integrated into Bulgarian society and to combat any discrimination against them and intolerance towards them. It also encouraged the authorities to continue to implement the National Programme for the Integration of Refugees and recommended that they provided it with more resources and that they make the population aware of the situation of refugees and take steps to combat any discrimination against them.
70. ECRI notes that in 2008 a National Strategy on Migration and Integration was adopted for the period 2008 to 2015. It set two main objectives: firstly, attracting Bulgarian nationals and foreigners of Bulgarian origin to settle permanently in Bulgaria; secondly, establishing a policy for receiving third-country nationals with a view to contributing to the development of the Bulgarian economy. The focus of the strategy is on legal migration and integration and it is implemented through annual action plans and evaluated through annual reports.
71. Following this, a National Strategy on Migration, Asylum and Integration was adopted for the years 2011 to 2020. It aims to establish an effective national migration management policy, based on the presumption that the current migration processes will transform Bulgaria from an emigrant country to one receiving immigrants. One of its stated purposes is more efficient management of economic migration and integration. The strategy includes the following target groups, among others: irregular third-country nationals and stateless persons; refugees and asylum seekers or persons granted subsidiary or temporary protection, as well as persons granted humanitarian status; third-country nationals and stateless persons entering and residing legally in Bulgaria for the purposes of employment, education or family reunification; foreign nationals of Bulgarian origin; and highly skilled migrants. Its policy principles include the organisation of targeted campaigns to improve the cultural-diversity climate and to counteract xenophobia, as well as strict compliance with the anti-discrimination legislation.
72. As regards the integration of immigrants residing legally in the country (third-country nationals and refugees), the strategy states that Bulgaria pursues an effective integration policy aiming to integrate them successfully by granting to them equal rights, responsibilities and opportunities. It is implemented on the basis of the Common Basic Principles for Immigrant Integration Policy in the European Union, with support from the European Integration Fund. Information and integration centres assisting newly arriving foreigners by providing them with information which is necessary for their stay in the country were opened in Sofia and the other three largest Bulgarian cities under projects supported from the European Fund for the Integration of Third-country Nationals.
73. ECRI notes that the National Programme for the Integration of Refugees, which was first adopted in 2005, now covers the period 2011 to 2013. It provides integration services for newly recognised refugees and persons granted other forms of international protection for a one-year period and financial assistance including housing and health insurance, on condition of participation in Bulgarian language training courses for a six-month period and social counselling. The Integration Centre, which is run by the State Agency for Refugees, provides Bulgarian language training, organises vocational qualifications and assists

refugees in finding jobs. ECRI is not aware of any plans to prolong the programme beyond 2013.

- **Policies' results**

74. According to a report prepared by a coalition of NGOs<sup>25</sup>, there has been no significant progress in the relevant priority areas related to Roma integration into mainstream society in Bulgaria. In their view, the NRIS lacks synergy and coherence and overlooks major areas in relation to housing conditions, health care and educational integration. Other major weaknesses identified in the Bulgarian NRIS are the lack of mechanisms for collecting and disseminating disaggregated data and lack of activities aimed at strengthening Roma participation. In addition, the NRIS fails to provide for sufficient funding; 71 out of 122 activities in the Action Plan are not specifically budgeted.
75. The NRIS has been criticised by Roma themselves for equating Roma with those in a vulnerable social and economic situation and introducing this criterion as a prerequisite to Roma identity. They regret that their identity as a national minority with language, traditions and cultural heritage is not recognised and reinforced but that the NRIS treats the challenges presented by the Roma as a social problem (unemployment, early marriage, illiteracy).
76. ECRI is very concerned that both Roma and civil society organisations are of the opinion that the NRIS has had few positive results so far. Indeed, it notes that Roma continue to live in spatial isolation which results in social isolation. A significant part of Roma residing in cities inhabit overpopulated neighbourhoods, frequently outside the regulated outskirts of the city, located in places that do not have water and sewer systems and where the electricity supply is obtained illegally or is non-existent. Two fifths of Roma still live in houses without water supply, taking water from outside/street taps and wells; three fifths of Roma houses are not connected to the central sewer system, and four fifths have no bathrooms inside<sup>26</sup>. Moreover, there continues to be high unemployment levels in the Roma population, or employment in only very low-income jobs. Only 50.2% of economically active persons are employed, that is 19.35% of all Roma aged 15 and over<sup>27</sup>. On the other hand, as well as some improvements in the field of education (see Topics specific to Bulgaria), ECRI is pleased to learn that, since a change in the law in 2012, illegally built houses can now be legalised and are no longer subject to demolition leaving Roma families homeless.
77. Moreover, the NCCEII does not appear to function well. In April 2013, 15 representatives of Roma organisations officially walked out of the first meeting of this body due to its lack of efficiency and renounced their membership. They insisted that it had to be restructured or replaced by a new entity to be effective and they sent an open letter to the Deputy Prime Minister setting out their demands. ECRI understands that a working group has been established to examine a possible change in the structure of the NCCEII.
78. ECRI considers that the NRIS is a sound policy document representing a clear opportunity to take concrete steps to improve the situation of Roma in Bulgaria. However, it regrets that there continues to be inadequate financial provision for

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<sup>25</sup> Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Bulgaria, Prepared by a civil society coalition comprising the following organizations: Open Society Institute – Sofia, Indi-Roma 97 Social Foundation, Health of the Roma People Foundation, Roma Academy for Culture and Education Association, Roma Solidarity Foundation, Integro Association, Nov Pat Association, Amalipe Centre for Intercultural Dialogue and Tolerance, World without Borders Association, Written by Dimitar Dimitrov, Vania Grigorova, Joana Decheva, 2013.

<sup>26</sup> National Roma Integration Strategy of the Republic of Bulgaria (2012 - 2020).

<sup>27</sup> Idem.

Roma integration and lack of political will to assist the Roma population. This serves to perpetuate the deeply rooted structural and societal discrimination and popular prejudice against Roma.

79. ECRI strongly recommends that the authorities allocate adequate funding to the National Roma Integration Strategy for it to be effective. They should also find solutions, in close cooperation with all the communities involved, in order for the National Council for Cooperation on Ethnic and Integration Issues to function efficiently for the integration of minorities.
80. ECRI has no information about implementation or effectiveness of the National Strategy on Migration, Asylum and Integration. As concerns the National Programme for the Integration of Refugees, ECRI has been informed by governmental and civil society organisations that it does not function well, primarily due to lack of adequate funding. The main concerns are that the programme is limited to 100 persons; it is operational only in Sofia, so refugees have to move to the capital to enrol; there are no childcare facilities making it difficult for parents to attend the compulsory Bulgarian language courses; the language classes are overcrowded and all levels are mixed; only three vocational training courses are available (in tailoring, hairdressing and cosmetics) and the level of housing remains insufficient. Overall, the ineffective support in terms of integration has led many refugees to drop out of the programme and try to work to earn a living. ECRI considers that steps need to be taken to improve the programme in order for refugees to have a real chance at integration in Bulgarian society. Moreover, the programme should be extended beyond the end of 2013 and take into account the high numbers of refugees and persons granted international protection expected to remain in Bulgaria.
81. ECRI recommends that the authorities work closely with the UNHCR to extend in time and improve the integration package for refugees.
82. ECRI refers also to the section below on Topics specific to Bulgaria for an analysis of the current refugee crisis in Bulgaria.

## **II. Topics specific to Bulgaria**

### **1. Interim follow-up recommendations of the fourth cycle<sup>28</sup>**

#### **- Training in racial discrimination issues**

83. In its fourth report, ECRI recommended that the Bulgarian authorities strengthen the initial and in-service training in racial discrimination issues and, in particular, in the provisions of the Anti-Discrimination Act offered to judges, and that the same training be provided to prosecutors. In its conclusions, adopted on 7 December 2011, ECRI welcomed the measures taken to provide training in racial discrimination issues. However, it noted that the number of judges and prosecutors who had received training remained too low. It considered that more should be done to enable training on the provisions of the Anti-Discrimination Act.
84. According to information provided by the authorities, a long-term programme of training of members of the judiciary in the European Convention on Human Rights has been on-going since 2005. Training on Article 14 and Protocol 12 is mandatory. Moreover, the National Institute of Justice (NIJ) carries out a special module on implementation of the Anti-Discrimination Act, paying attention also to issues of discrimination on racial and ethnic grounds and including analysis of the case law of the Commission for Protection against Discrimination and the

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<sup>28</sup> This section also deals with an additional issue which was not part of the interim follow up recommendations of the fourth cycle but which is closely related to one of them (see § 91).

Bulgarian courts. In 2011, a special seminar was organised by the NIJ providing training in racial discrimination issues for judges, examining magistrates and police officers. Furthermore, in 2012, the NIJ developed a specialised programme for human rights training of members of the judiciary with the Council of Europe, which focuses on good practices of member States in combating discrimination.

85. The Commission for Protection against Discrimination also organises a series of specialised training seminars on the application of the Anti-Discrimination Act targeting a wide range of participants, including judges, prosecutors, investigative magistrates, lawyers and experts from human rights NGOs specialised in protection against discrimination.
86. ECRI was also informed that in 2011, under the EU Progress Programme, a joint project was carried out by the Ministry of Labour and Social Policy, the Commission for Protection against Discrimination and the Open Society Institute in which the Commission developed two specialised training modules for members of the judiciary on the implementation of the Anti-Discrimination Act, one focused on aspects related to criminal proceedings and the other on civil proceedings.
87. In view of the above, ECRI is satisfied that its interim follow-up recommendation has been implemented adequately.

- **Functioning of the Commission for Protection against Discrimination**

88. In its fourth report, ECRI recommended that the Bulgarian authorities ensure that the Commission for Protection against Discrimination (the Commission) has the human and financial resources needed to set up and run local offices. In its conclusions, adopted on 7 December 2011, ECRI noted that the Commission had 18 local branches but it would need 28 branches to cover all districts in Bulgaria. ECRI concluded that significant progress had been made, but it considered that more efforts were essential to allow for the opening of more local branches.
89. The authorities informed ECRI that 20 regional offices of the Commission are now open but only 18 of them are fully operational. Therefore, the situation has not progressed. In addition, regional offices lack equipment and human resources; they are in fact run by one single representative with no additional staff. Their role is to provide advice to victims of discrimination, assistance with filing a complaint to the Commission and referral of cases to the Commission in Sofia. ECRI considers that they play a very important role and maintains that more efforts are needed to permit the opening of the remaining local branches throughout the country. Moreover, these branches can only be effective with adequate financial and human resources.
90. ECRI reiterates its recommendation that the authorities set up and run local offices of the Commission for Protection against Discrimination in all 28 districts of Bulgaria and provide them with adequate financial and human resources to function effectively.
91. In addition, ECRI also wishes to draw attention to the recommendation it made in its fourth report that the Bulgarian authorities continue to inform the general public about the content and scope of the Anti-Discrimination Act and that they take measures specifically aimed at ethnic and religious minorities. Following the amendments of 2012, the Act now requires the Commission to inform the public via the mass media of the provisions applicable in the area of protection against discrimination. ECRI notes, however, that booklets and information leaflets about the Act are only available in Bulgarian and some in English and the only language permitted for filing complaints is Bulgarian. This clearly hinders access to justice of the most vulnerable groups in the country. ECRI considers that

efforts should be made to produce information about discrimination and the remedies available to victims in a variety of languages commonly spoken in Bulgaria. Application forms to the Commission should also be available in several languages to facilitate the complaints procedure for the persons most at risk of discrimination.

92. ECRI recommends that the Commission for Protection against Discrimination produces and publishes information about discrimination, and explaining the procedures for discrimination complaints, in a variety of languages used in the country and disseminates it widely.

- **The integration of Roma children into mainstream schools**

93. In its fourth report, ECRI strongly recommended that the Bulgarian authorities continue and intensify the integration process of Roma children into mainstream schools in order to promote social diversity. In its conclusions, adopted on 7 December 2011, ECRI noted with satisfaction that a number of measures had been taken which indicated some progress but concluded that these efforts needed to be pursued consistently to remedy the educational gap between Roma and non-Roma children.
94. The section on education of the National Roma Integration Strategy (NRIS) is, according to NGOs, relatively well developed. It sets out seven objectives and 40 interventions. These continue the main trends of the Roma educational integration policy from previous years. At the same time, a number of gaps are noticeable. For example, one of the objectives is “guaranteeing the right to equal access to quality education, including by integrating Roma children and students in ethnically mixed kindergartens and schools” (known as the de-segregation objective). Four tasks are set relating to encouraging ethnically mixed education at pre-school and university level but not at the school level. This is considered a serious failing because, according to the above-mentioned Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy, the strong tendency for Roma children to be enrolled in schools situated in Roma neighbourhoods still persists. More than half of Roma of school age (51.8%) attend education institutions where the majority of students are of Roma origin. The main reason for this is the tendency to choose the closest school in terms of distance, but persistent discrimination and negative attitudes toward Roma are also a significant factor in Roma children not enrolling in mainstream schools.
95. As for positive developments, ECRI is pleased to note that amendments to the Public Education Act introduced obligatory pre-schooling for two years starting in the 2010-2011 school year. The main objective is to ensure an equal start for every child and early socialisation and development of skills required for entry to first grade. According to the authorities, the percentage of Roma children enrolled in kindergartens in the school year 2011-2012 was 81.5% and most Roma households (92%) reported that there is a kindergarten within 3 km of their residence.
96. The Centre for Educational Integration of Children and Pupils from Ethnic Minorities, established in 2005, continues to fund projects in schools, kindergartens and municipalities which focus on providing equal access to quality education for children from ethnic minority groups, as well as preserving and developing their cultural identity. ECRI was informed that in the last few years, around 80 projects were financed throughout Bulgaria, including ones related to reducing drop-out, training teachers in the culture and traditions of ethnic minorities, and integrating Roma parents in the management boards of schools and kindergartens. ECRI was also informed that the responsibility for educational

desegregation has been transferred to local authorities and that there has been some success in moving Roma pupils from segregated to mainstream schools.

97. However, ECRI regrets that although the Bulgarian authorities have defined support for educational integration as a major priority in the area of education and despite the efforts highlighted above, low achievement in education persists and drop-out rates continue to be disproportionately high among ethnic minorities, particularly Roma pupils. According to official government data for 2011, while secondary school was the highest level of education completed by 52.3% of the Bulgarian population, only 9% of the Roma population had completed that level. The proportion of the groups that never completed any level of education ranged from 0.9% for Bulgarians to 21.8% of Roma.
98. Moreover, a study conducted by the Commission for Protection against Discrimination shows that discriminatory attitudes are endemic in the Bulgarian educational system. According to the research, 25% of Bulgarian teachers believed that children from different ethnic backgrounds should study in separate schools and 20% were convinced that children from different ethnic backgrounds have different abilities<sup>29</sup>. Even more worrying is that similar attitudes were found among children aged 4-5 years old. ECRI considers that these discriminatory attitudes are clear indicators that the initiatives undertaken so far have not led to significant change.
99. In addition, ECRI regrets that a Draft Law on Pre-school and School Education which was the result of a wide process of consultations, including with Roma NGOs, and was largely viewed as an important step forward, has been set aside following the political changes in 2013.
100. ECRI considers that its conclusions of 2011 are still valid, namely that efforts need to be pursued to remedy the educational gap between Roma and non-Roma children.
101. Furthermore, ECRI strongly recommends that specific courses on equality and non-discrimination are provided to school teachers as part of their compulsory initial and in-service training.

## **2. Refugees and asylum seekers**

102. As mentioned already in this report, Bulgaria is currently faced with an increasing influx of refugees as a result of the conflict in Syria. According to government statistics, 11 606 asylum seekers entered the country in 2013. The majority are living in government-run reception centres, which are overcrowded. However, emergency centres have been set up, the largest one being Harmanli, about 30 kilometres from the Turkish border. This closed centre, effectively a detention centre, accommodates asylum seekers in tents, containers and a dilapidated building. The conditions are deplorable, with inadequate provision of food and hygienic facilities, almost no medical care and no access to psychological counselling or interpretation services. ECRI is pleased to note improvements recently brought to its attention by the authorities; medical care, legal assistance and warm food are now provided in all accommodation centres. It fully understands that the current situation is difficult for the Bulgarian authorities and encourages them to make wise and efficient use of all up-coming financial aid to ensure that asylum seekers and refugees have access to decent living conditions and all other reception services required by law as well as to improve the refugee status determination procedures.

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<sup>29</sup> Darik News, 7 August 2012: [http://dariknews.bg/view\\_article.php?article\\_id=944172&audio\\_id=115600](http://dariknews.bg/view_article.php?article_id=944172&audio_id=115600).

103. ECRI is particularly concerned by the decision of the Government in October 2013 to build a 30km-long temporary, according to the authorities, barrier fence on the border with Turkey in the areas where it is easiest for migrants and refugees to cross into Bulgaria. Such action could jeopardise Bulgaria's international obligations under the 1951 Convention relating to the Status of Refugees if genuine refugees are prevented from entering the territory to seek international protection. Moreover, physical barriers contribute to reinforcing the stereotype of asylum seekers as dangerous and undesirable. ECRI refers to the comments of the Commissioner for Human Rights of the Council of Europe on this issue.<sup>30</sup>

104. ECRI strongly recommends that the authorities remove any border fences which create physical barriers to refugees seeking international protection.

### **3. Policies to combat discrimination and intolerance against LGBT persons**

#### **- Legislative issues**

105. ECRI notes that the current Criminal Code makes no reference to the hate motive of sexual orientation<sup>31</sup> or gender identity<sup>32</sup> in any of its specific articles addressing hate speech and other offences motivated by hate (see §§ 3-4 and 14 of this report). Consequently, in the rare cases in which homophobic attacks are reported and prosecuted, suspects are often charged with the offence of causing bodily harm with hooligan motive. However, ECRI has been informed that proposed amendments to the Criminal Code, which were presented to the public in April 2012, include sexual orientation as a ground in Articles 162 and 163. Since the bill has not yet been enacted, ECRI encourages the authorities to insert sexual orientation also in Articles 116 (1) subsection 11 (murder committed with hooligan, racist or xenophobic motives) and 131 (1) subsection 12. They should also include gender identity as a protected ground in all the above-mentioned articles of the Criminal Code.

106. ECRI recommends that the authorities include sexual orientation and gender identity in all the Articles of the Criminal Code addressing hate speech and hate crime (Articles 162, 163, 131 and 116).

107. In the area of civil and administrative law, the Anti-discrimination Act includes sexual orientation as a ground for discrimination but not gender identity. ECRI considers that gender identity should be included in order to ensure coherence with the criminal legislation, in accordance with its recommendation above, and a uniform approach to conduct targeting sexual orientation and gender identity.

108. ECRI recommends that the authorities amend the Anti-discrimination Act to include gender identity as a ground of discrimination.

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<sup>30</sup> In an interview with the Bulgarian National Television on 6 November 2013, the Human Rights Commissioner stated: "In its policy towards refugees, Bulgaria must not forget its international obligations under signed conventions. The country cannot close its borders with Turkey, or any other neighbour. Fences are ineffective and too expensive. People will find ways to get around them, and this will be even more dangerous. It would be much wiser to use the money for improving conditions in reception centres and integration policies instead."

<sup>31</sup> "Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender", the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

<sup>32</sup> "Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modifications to the bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerism", *ibidem*.

109. ECRI notes that Bulgaria has explicitly recognised in its national legislation relating to asylum and refugees that sexual orientation is included in the notion of “membership of a particular social group”<sup>33</sup>. On this basis, asylum seekers fleeing persecution due to their sexual orientation can be granted international protection.
110. ECRI refers also to its comments and recommendation relating to the Radio and Television Act in §§ 42 and 43 of this report.

- **Data**

111. ECRI notes that there is no official data on the LGBT population in Bulgaria. Moreover since the criminal legislation does not recognise offences committed on grounds of sexual orientation or gender identity, there are no relevant statistics on hate speech or hate crime. The limited information available comes from NGOs. According to these, there have been six cases in recent years of violence against LGBT persons and only one which resulted in the prosecution and conviction of the perpetrator (see § 59).

112. ECRI recommends that the authorities collect data on hate speech and hate crime against LGBT persons, including on the number of cases reported, investigated and prosecuted.

113. ECRI has been informed that 10 cases have been brought before the Commission for Protection against Discrimination so far alleging discrimination based on sexual orientation and in all cases the Commission found in favour of the victim. This indicates that there is discrimination and intolerance against LGBT persons in Bulgaria and ECRI welcomes the recognition of such discrimination as a breach of fundamental rights by Bulgaria’s anti-discrimination authority.

114. ECRI understands that Bulgarian legislation authorises the collection of personal data with the consent of those concerned. It recalls that Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person’s sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. It is clear that without such information, there can be no basis for developing and implementing policies to address intolerance and discrimination against LGBT persons.

115. ECRI encourages the authorities to undertake research and collect data on LGBT persons in Bulgaria as well as on discrimination and intolerance against them.

- **Promoting tolerance and combating discrimination**

116. According to a recent LGBT Survey of the European Union Agency for Fundamental Rights, 91% of the people interviewed believe that in Bulgaria positive measures to promote respect for the human rights of LGBT people are fairly rare or very rare. The survey shows that many LGBT people have to hide their sexual orientation at school or work. 19% of the people interviewed affirm that they have been discriminated against because of their LGBT status when looking for a job; 25% of them feel discriminated against at work; 12% feel

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<sup>33</sup> Report of the Council of Europe Commissioner for Human Rights on “Discrimination on grounds of sexual orientation and gender identity in Europe” (2nd edition, Council of Europe Publishing, September 2011).

discriminated against when looking for accommodation to rent or buy; 9% affirm feeling discriminated against by health care personnel<sup>34</sup>.

117. Concerning employment, according to research conducted by the Open Society Institute in Sofia, just over 40% of those polled think that an “untraditional” sexual orientation is an obstacle to competition in the labour market. In answer to the question “who is the person that you would never hire?”, more than 25% replied “a homosexual”<sup>35</sup>. Transgender and gender non-conforming individuals are the ones who experience most difficulty in accessing jobs and are the most commonly fired from work.
118. ECRI notes that sex education is not part of the basic curriculum in Bulgaria, but aspects of it comes up in health education and subjects such as biology and man and nature. However, there is no obligation for teachers of these subjects to discuss sexual orientation or trans and intersex issues in their classes. ECRI has been informed that transgender pupils are the most common victims of bullying and school policies do not provide for any particular support to them.
119. ECRI notes that there is no specific legislation regulating gender reassignment for trans and intersex persons. Article 76 (4) of the Civil Registration Act stipulates that a person’s name and gender can only be changed following court proceedings<sup>36</sup>. No procedures or criteria for allowing or refusing an application for gender rectification are defined. However, as regards gender reassignment, the very small number of cases brought so far (11) has established a positive trend; following an assessment by psychiatrists and sexologists, the way a person self-identifies is the primary criteria upon which to base the decision. There is no case law concerning intersex conditions. It appears that these are treated through medical intervention in early childhood without the opinion of the child being taken into account. ECRI points out that this practice is not in line with international standards and current expertise on the issue<sup>37</sup>. ECRI considers,

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<sup>34</sup> LGBT Survey Data explorer 2013 of the EU Agency for Fundamental Rights (FRA) <http://fra.europa.eu/DVS/DVT/lgbt.php>.

<sup>35</sup> <http://bnr.bg/sites/en/Economy/Pages/1801discriminationonlabormarket.aspx>.

<sup>36</sup> Specifics of the Bulgarian system are the existence of mandatory male-indicating or female-indicating suffixes of everybody’s name and the mandatory entry of the sex in each identity document.

<sup>37</sup> These include the following:

- 1) The 2006 Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Principle 18 calls on States to take all necessary legislative, administrative and other measures to ensure that no child’s body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration.
- 2) Resolution 1952(2013) of the Parliamentary Assembly of the Council of Europe on children’s right to physical integrity, which calls on member States to ensure that no-one is subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to persons concerned, and provide families with intersex children with adequate counselling and support.
- 3) Opinion No. 20/2012 of the Swiss National Advisory Commission on Biomedical Ethics On the management of differences of sex development, Ethical issues relating to intersexuality, which made a strong case against medical intervention for “psychosocial” reasons. The Commission also called for the deferral of non-trivial treatment until a child can consent. <http://www.bag.admin.ch/nek-cne/04229/04232/index.html?lang=en>.
- 4) The conclusions of the Second International Intersex Forum, organised by ILGA and ILGA-Europe in Stockholm on 9-11 December 2012, called for the right of bodily integrity and self-determination. The Forum demanded an end to mutilating and “normalising” practices such as genital surgeries, psychological and other medical treatments and that the personal, free, prior, and fully informed consent of the intersex individual be a compulsory requirement in all medical practices and protocols.

[http://www.ilga-europe.org/home/news/for\\_media/media\\_releases/intersex\\_forum\\_2012\\_media\\_release](http://www.ilga-europe.org/home/news/for_media/media_releases/intersex_forum_2012_media_release).

therefore, that the legislation needs to be further developed to include the essential criteria and necessary steps concerning both gender recognition and gender reassignment. For example, gender reassignment should not be a prerequisite for gender changes in personal documents<sup>38</sup>.

120. ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment ensuring that it is in line with international standards and expertise.
121. ECRI notes that surgery relating to a change of sex is covered under the national health insurance system. Hormone treatment, on the other hand, is not covered, as such treatment is only provided for “illnesses”. The costs must be borne by the trans or intersex person concerned. In view of the fact that hormone therapy is an essential part of gender reassignment, ECRI encourages the authorities to consider providing financial assistance to those in need of such treatment.
122. In view of the above-mentioned lack of information about LGBT people in Bulgaria and the significant discrimination, harassment and violence to which they are exposed, ECRI considers that the authorities should draw up and adopt an action plan to increase tolerance vis-à-vis LGBT persons and to combat homophobia and transphobia.
123. ECRI recommends that the authorities draw up and adopt an action plan to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care, taking inspiration from Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity.

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5) ECRI notes also that in 2013, Germany became the first European nation to allow babies with characteristics of both sexes to be registered as indeterminate gender on birth certificates.

<sup>38</sup> According to the report “Discrimination on grounds of sexual orientation and gender identity in Europe” (2nd edition, Council of Europe Publishing, September 2011), surgery leading to sterilisation is a requirement for gender recognition in Bulgaria. In addition, transgender persons must be unmarried in order to be legally recognised in the preferred gender.



## **INTERIM FOLLOW-UP RECOMMENDATIONS**

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

- ECRI strongly recommends that the Bulgarian authorities urgently organise an awareness-raising campaign promoting a positive image of and tolerance for asylum seekers and refugees and ensuring that the public understands the need for international protection.
- ECRI recommends that the Commission for Protection against Discrimination produces and publishes information about discrimination, and explaining the procedures for discrimination complaints, in a variety of languages used in the country and disseminates it widely.

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. (§2) ECRI reiterates its recommendation that Bulgaria ratifies Protocol No. 12 to the European Convention on Human Rights as soon as possible.
2. (§5) ECRI recommends that the gaps in the protection offered under Article 164 (1) of the Criminal Code should be filled and that religion should be included as a ground in Articles 162 (1) and 163. Colour, language and citizenship should be included as grounds for the commission of the offences set out in Articles 162 and 163.
3. (§7) ECRI recommends that the offence of threats against a person or group of persons on the grounds of their race, colour, language, religion, nationality or national or ethnic origin be included in the Criminal Code.
4. (§9) ECRI recommends that the Criminal Code be amended to include a provision against the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.
5. (§11) ECRI recommends that racial discrimination in the exercise of one's public office or occupation be criminalised.
6. (§13) ECRI encourages the authorities to consider the possibility of providing for the criminal liability of legal persons for racially motivated offences.
7. (§15) ECRI once again recommends that the Bulgarian authorities insert a provision in the Criminal Code expressly stating that racist motivation for any ordinary offence constitutes an aggravating circumstance.
8. (§18) ECRI recommends that colour and language be included as grounds in Article 4 of the Anti-discrimination Act, in accordance with its General Policy Recommendation No. 7 § 1.
9. (§20) ECRI recommends that discrimination by association and announced intention to discriminate be included as forms of discrimination in the Anti-discrimination Act.
10. (§22) ECRI recommends that the Anti-discrimination Act expressly mentions that public authorities are under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination and that the violation of such condition may result in the termination of the contract, grant or other benefits.
11. (§24) ECRI recommends that a provision be inserted into the Anti-discrimination Act to the effect that discriminatory provisions which are included in individual or collective contracts or agreements, internal regulations of enterprises, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, should be amended or declared null and void.
12. (§26) ECRI strongly recommends that the authorities insert a provision into the Anti-discrimination Act providing for an obligation to suppress public financing of organisations or political parties which promote racism.

13. (§29) ECRI recommends that a provision be inserted into the Anti-discrimination Act expressly prohibiting members of the Commission for Protection against Discrimination from receiving instructions.
14. (§33) ECRI strongly recommends that the authorities keep a close watch over the numerous extremist groups and political parties operating in Bulgaria and take swift action against any criminal activities in which they engage, including incitement to discrimination, hatred and violence.
15. (§39) ECRI strongly recommends that the authorities take urgent steps to ensure that anyone who engages in hate speech as defined in Articles 162 (1) and 164 (1) of the Criminal Code is duly prosecuted and punished.
16. (§43) ECRI recommends that the provisions of the Radio and Television Act relating to hate speech be amended to include the ground of sexual orientation.
17. (§46) ECRI strongly recommends that the authorities encourage the Council for Electronic Media to take action in all cases of dissemination of hate speech. It should also be encouraged to raise the fines for violations of the provisions of the Radio and Television Act relating to hate speech so that they act as a real deterrent, as well as to make greater use of the possibility of revoking broadcasting licences where appropriate.
18. (§49) ECRI strongly recommends that the Bulgarian authorities urgently organise an awareness-raising campaign promoting a positive image of and tolerance for asylum seekers and refugees and ensuring that the public understands the need for international protection.
19. (§60) ECRI encourages the authorities to make full use of the Criminal Code provisions specifically targeting racist violence in all cases where this is appropriate.
20. (§79) ECRI strongly recommends that the authorities allocate adequate funding to the National Roma Integration Strategy for it to be effective. They should also find solutions, in close cooperation with all the communities involved, in order for the National Council for Cooperation on Ethnic and Integration Issues to function efficiently for the integration of minorities.
21. (§81) ECRI recommends that the authorities work closely with the UNHCR to extend in time and improve the integration package for refugees.
22. (§90) ECRI reiterates its recommendation that the authorities set up and run local offices of the Commission for Protection against Discrimination in all 28 districts of Bulgaria and provide them with adequate financial and human resources to function effectively.
23. (§92) ECRI recommends that the Commission for Protection against Discrimination produces and publishes information about discrimination, and explaining the procedures for discrimination complaints, in a variety of languages used in the country and disseminates it widely.
24. (§104) ECRI strongly recommends that the authorities remove any border fences which create physical barriers to refugees seeking international protection.
25. (§106) ECRI recommends that the authorities include sexual orientation and gender identity in all the Articles of the Criminal Code addressing hate speech and hate crime (Articles 162, 163, 131 and 116).
26. (§108) ECRI recommends that the authorities amend the Anti-discrimination Act to include gender identity as a ground of discrimination.

27. (§112) ECRI recommends that the authorities collect data on hate speech and hate crime against LGBT persons, including on the number of cases reported, investigated and prosecuted.
28. (§115) ECRI encourages the authorities to undertake research and collect data on LGBT persons in Bulgaria as well as on discrimination and intolerance against them.
29. (§120) ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment ensuring that it is in line with international standards and expertise.
30. (§123) ECRI recommends that the authorities draw up and adopt an action plan to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care, taking inspiration from Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity.



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