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# **ECRI REPORT ON CROATIA**

## **(fifth monitoring cycle)**

Adopted on 21 March 2018

Published on 15 May 2018

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## FOREWORD

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

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

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

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

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

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

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

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 7 December 2017; 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 Croatia on 20 June 2012, progress has been made in a number of fields.**

The authorities have improved protection against hate crime through amendments to the Criminal Code, which introduced a new provision criminalizing violent conduct in public places. The law now also punishes creation of or leading a group which promotes racism.

Within the framework of the National Plan for the Protection and Promotion of Human Rights for 2013-2016, training courses had been organised for police officers, prosecutors and judges on combating racial discrimination, including racist and homo/transphobic violence.

In November 2012, the Croatian Government approved a National Roma Inclusion Strategy (NRIS) for the years 2013 to 2020 which includes, inter alia, measures in the areas of education, employment, housing and health. The previous Roma strategies yielded some positive results: a large majority of Roma children attend primary school, after-school programmes offering extra tuition are available for pupils and unemployed Roma can benefit from self-employment subsidies.

In 2013, further legislative steps have been taken to ensure access to adequate housing for returnees under the national Housing Care Programme.

Several positive developments have occurred in recent years with regard to the situation of persons who have been granted subsidiary protection, through the Migration Policy for 2013-2015, which implemented one of ECRI's priority recommendations made in its last report on Croatia. This Policy has secured to beneficiaries of subsidiary protection access, on an equal footing with nationals of Croatia, to primary and secondary schooling free of charge. In November 2017, a new Action Plan for the integration of persons who have been granted international protection (2017-2019) was adopted.

In July 2014, a new Law on Registered Same-Sex Partnerships was enacted, which improved the legislative framework for LGBT persons.

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

The Croatian Criminal Code is still not entirely in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. Gaps also remain with regard to civil and administrative law provisions.

Racist and intolerant hate speech in public discourse is escalating; the main targets are Serbs, LGBT persons and Roma. There is a growing rise of nationalism, particularly among the youth, which primarily takes the form of praising the fascist Ustaša regime. In the regional media and on Internet, expressions of racism and xenophobia against Serbs, LGBT persons and refugees are commonplace, as is abusive language when referring to Roma. Physical attacks against these groups as well as their property also occur.

The responses of the Croatian authorities to these incidents cannot be considered fully adequate. The authorities seldom voice any counter-hate speech message to the public. Criminal action is ruled out easily and most cases on hate speech and hate motivated violence are treated as misdemeanors. The lack of prosecutions does not provide an effective deterrent against such crimes. The provisions on racist motivation as an aggravating circumstance are also rarely applied due to lack of knowledge and expertise among the judiciary in recognising hate crime.

The national Roma strategies have not been implemented fully and the situation of the Roma community remains characterised by high levels of social exclusion. School drop-out rates are still high and access to employment is alarmingly low.

Despite the available legislative framework, prejudice against LGBT persons is still widespread and they experience different forms of discrimination in their daily lives.

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

The criminal and civil and administrative legislation should be brought in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

The authorities should introduce compulsory human rights education as part of civic education into all school curricula, especially as regards the right to equality and the prohibition of discrimination. Appropriate text books should be developed and teachers should continue receiving the necessary training in these subjects.\*

The authorities should condemn hate speech and promote counter-speech by politicians and high-ranking officials. All political parties in the country should also condemn hate speech and call on their members and followers to abstain from using it.

A racist and/or homo-/transphobic motivation in cases of violent incidents should be made an integral part of investigations, particularly through providing clear guidelines between the police and State Attorney's Office, as well as judicial proceedings from their very beginning. The authorities should also provide training activities for law enforcement officials and the judiciary on hate crime and the application of provisions regarding hate motivation.

Adequate funding should be allocated for the effective implementation of the NRIS. It also should be revised systematically to include more targeted measures and success indicators to measure its impact, in close cooperation with regional and local authorities as well as members of the Roma community.\*

The authorities should ensure that the Action Plan for the integration of persons who have been granted international protection (2017-2019) has well-defined goals and targets, time-frames, funding, success indicators as well as a monitoring and evaluation system for its effective implementation.

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 and racial discrimination as per General Policy Recommendation (GPR) No.7<sup>1</sup>

##### - Criminal law

1. ECRI is pleased to note that the Croatian Criminal Code contains a number of provisions corresponding to ECRI's General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination.<sup>2</sup> The following analysis focuses mainly on the lacunae.
2. Article 325 (1) of the Criminal Code criminalises incitement to violence and hatred against a group of persons or a member of such a group on account of their "race, religion, national or ethnic origin, descent, colour, language, gender, sexual orientation, gender identity, disability or any other characteristics" through press, radio, television, computer system or network or at a public gathering, with up to three years' imprisonment. There is no reference to incitement to discrimination, as per ECRI's GPR No. 7 § 18 a. While the ground of citizenship is not explicitly mentioned, the authorities considered it covered by the concept of "any other characteristics". However, there is no case law to confirm this.
3. Article 147 and Article 149 of the Criminal Code respectively criminalise insult and defamation, whereas Article 139 penalises threats. There is no mention of any grounds, contrary to what is recommended in GPR No. 7 § 18 b and c. The authorities expressed that these provisions must be read together with Article 87(21) of the Criminal Code, according to which it shall be considered as an aggravating circumstance if a criminal offence is committed on account of the race, colour, religion, national or ethnic origin, language, disability, gender, sexual orientation or gender identity of another person (§ 21 of GPR No.7), and that this would be in line with GPR No. 7 § 18 b and c. Concurring with this conclusion, ECRI nevertheless notes that the ground of citizenship is lacking.
4. The Criminal Code lacks a reference to the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a group of persons on grounds of their race, colour, language, religion, nationality or national or ethnic origin, as per GPR No. 7 § 18 d.
5. While Article 325 (1) of the Criminal Code covers the prohibition of the public dissemination or distribution of written, pictorial or other material containing racist manifestations, there are no designated provisions on the production and storage of such materials, as recommended in GPR No. 7 § 18 f.
6. In its fourth report (§ 26), ECRI recommended making it an offence to create or lead a group which promotes racism, in line with GPR No. 7 § 18 g. It therefore welcomes the introduction of Article 325 (2) and (3) of the Criminal Code in 2012<sup>3</sup>, which criminalises such acts.
7. ECRI recommends that the authorities bring the Criminal Code into line with its General Policy Recommendation (GPR) No. 7 as indicated in the preceding paragraphs; in particular they should (i) include in all criminal law provisions

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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. 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>2</sup> The Croatian Criminal Code (2011, last amended in 2017).

<sup>3</sup> Article 82, Official Gazette of Croatia No. 144/12, 19 December 2012.

aimed at combating racism and intolerance the ground of citizenship; (ii) criminalise incitement to discrimination; (iii) 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; and (iv) criminalise the production and storage of written, pictorial or other material containing racist manifestations.

- **Civil and administrative law**

8. ECRI notes that Article 14 of the Constitution<sup>4</sup> states that all citizens are equal before the law, regardless of any particularity or personal characteristic. Article 39 prohibits the incitement to use of violence to national, racial or religious hatred, or any form of intolerance. These provisions are in line with GPR No. 7 § 2.
9. The Anti-Discrimination Act<sup>5</sup> (hereafter the Act) prohibits, in Article 1 and 2, direct and indirect discrimination on the grounds of, *inter alia*, race or ethnic affiliation, religion, language, sexual orientation and gender identity, as per GPR No. 7 § 4. ECRI notes with satisfaction that the Act is widely considered to be a very comprehensive law covering key aspects of GPR No. 7. The analysis below focuses primarily on areas of GPR No. 7 that have not been covered or remaining gaps, in particular following the recommendations in ECRI's fourth report, which referred to the Act in detail (§§ 29-32).
10. Citizenship is still not included in the list of prohibited discrimination grounds. Regarding forms of discrimination, the Act has no explicit mention of announced intention to discriminate nor of aiding another to discriminate, as per GPR No. 7 § 6. However, the authorities confirmed that in practice, both of them are applied by way of interpretation of the EU Directives 2000/43/EC and 2000/78/EC<sup>6</sup> which had been transposed into Croatian law.
11. While Article 8 of the Act prohibits discrimination by public authorities, it does not expressly mention their positive duty to promote equality in carrying out their functions, as recommended in GPR No. 7 § 8. Furthermore, the law does not place 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 GPR No. 7 § 9.
12. The Act applies to all sectors of private and public employment, self-employment and occupation, including contract work.<sup>7</sup> Similarly, the Labour Act prohibits direct and indirect discrimination in the field of employment and working conditions.<sup>8</sup> Article 322 of the Law of Obligations<sup>9</sup> further ensures that an agreement which is contrary to the Constitution, compulsory regulations or the morality of society is null and void. ECRI considers that these different pieces of legislation make it possible to amend discriminatory provisions or declare them null and void in individual or collective contracts or agreements, as referred to in GPR No. 7 § 14.
13. Neither the Act nor other legislation (such as the Political Activity and Election Campaign Financing Act<sup>10</sup>) provide for an obligation to suppress public financing of organisations or political parties which promote racism, as recommended in

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<sup>4</sup> The Constitution of Croatia (2010).

<sup>5</sup> Official Gazette of Croatia No. 85/08, 15 July 2008.

<sup>6</sup> Council Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation.

<sup>7</sup> Article 8; EELN (2016): 47.

<sup>8</sup> Article 7(4), Official Gazette of Croatia No. 93/14, 15 July 2014.

<sup>9</sup> Official Gazette of Croatia No. 35/05, 25 February 2005 (amended in No. 41/08, 125/11, 78/15).

<sup>10</sup> Official Gazette of Croatia No.24/11, 16 February 2011 (amended in No. 61/11, 27/13, 2/14, 96/16).

ECRI's GPR No. 7 § 16. As regards the possibility of dissolution of such organisations, as per GPR No. 7 § 17, provisions exist in the Act on Criminal Responsibility of Legal Persons<sup>11</sup> making it possible for courts to ban an organisation's activity if it commits a criminal offence. Similarly, the Constitutional Court may order the dissolution of political parties.<sup>12</sup>

14. In its fourth report (§ 31), ECRI pointed out that the Act allows NGOs and other bodies that have a legitimate interest in combating racism and racial discrimination to initiate civil cases only in legal actions concerning the collective interests of a certain group, where "the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group".<sup>13</sup> This was however not possible in the case of violation of equality of a single individual and hence, ECRI recommended amending the Act to this effect.<sup>14</sup> This recommendation has not been implemented.

15. ECRI recommends that the authorities amend the anti-discrimination legislation to remedy the gaps identified above in line with its General Policy Recommendation (GPR) No. 7, in particular, they should i) introduce a legal provision placing public authorities under a duty to promote equality in carrying out their functions; ii) include the express duty to ensure that those parties to whom public authorities award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination; iii) provide for the obligation to suppress public financing of organisations or political parties which promote racism; and iv) ensure that NGOs and other bodies that have a legitimate interest in combating racism and racial discrimination can bring civil cases concerning an individual person.

- **National specialised bodies**<sup>15</sup>

16. The Ombudsperson is a multi-mandated<sup>16</sup> independent authority which has been designated as the central body for the elimination of discrimination and promotion of equal treatment. It supervises compliance with the Anti-Discrimination Act, with the exception of certain discrimination grounds that fall within the remit of three specialised ombudspersons: disability (the Ombudsperson for Persons with Disabilities), discrimination against children (the Ombudsperson for Children), and gender/sex, gender identity and sexual orientation (the Ombudsperson for Gender Equality).

17. ECRI is pleased to note that the Ombudsperson has all the powers recommended in ECRI's GPR No. 7 § 24 and conforms with the recommendations under ECRI's GPR No. 2 on national specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. Its competences include, *inter alia*, dealing with complaints of discrimination, providing information to persons who complain of discrimination about their rights and remedies, increasing public awareness, conducting surveys and collecting and analysing data on discrimination. Although the Ombudsperson cannot issue binding decisions or impose sanctions, it can give warnings, proposals, opinions and recommendations. While the Ombudsperson has the right to file criminal charges to the state attorney's office, join proceedings before civil courts as an

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<sup>11</sup> Official Gazette of Croatia No. 151/03, 11 September 2003, (amended in No. 110/07, 45/11, 740-02/12).

<sup>12</sup> Article 85, The Constitutional Act on the Constitutional Court of the Republic of Croatia, Official Gazette of Croatia No. 49/02, 3 May 2002.

<sup>13</sup> Article 24(1).

<sup>14</sup> In § 32, see also GPR No.7 § 25.

<sup>15</sup> Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

<sup>16</sup> Ombudsman, National Preventive Mechanism, National Human Rights Institution and Equality Body.

intervener *sui generis* and initiate cases before misdemeanour courts, ECRI notes that it can only initiate cases before civil courts for cases of discrimination concerning the collective interests of a certain group, but not individual ones, as per GPR No. 7 § 24 (see also § 14).

18. ECRI recommends that the Ombudsperson is granted the right to bring civil cases concerning an individual person.
19. The two specialised ombudspersons (the Ombudsperson for Gender Equality and the Ombudsperson for Children), are other important bodies for the mandate of ECRI and have similar powers as the Ombudsperson in connection with discrimination based on grounds covered by them. All four ombud's institutions are obliged to submit their annual reports to the Parliament where the latter casts a vote for their approval. Additional provisions provide that the specialised ombudspersons are to be dismissed if the Parliament does not approve their annual report. ECRI considers that both regulations, the vote as such and the dismissal, are serious impediments to the independence of these institutions.<sup>17</sup>
20. ECRI recommends that the authorities amend the legislation so that the reports of the Ombudsperson and specialised ombudspersons are not voted on as well as the legislation concerning the dismissal of the specialised ombudspersons upon rejection of their annual reports by the Parliament to fully ensure their independence.

## 2. Hate speech<sup>18</sup>

21. Hate speech is covered by the criminal offence of incitement to violence and hatred (Article 325 of the Criminal Code - see § 2). Art. 87 (21) also defines hate crime and considers it as an aggravating circumstance (§ 3) unless the law explicitly prescribes a heavier punishment for specific offences.<sup>19</sup> In addition to criminal liability, the Croatian law also provides for punishment of hate speech as a misdemeanour and under civil liability that is subject to different legislation, such as the Anti-Discrimination Act<sup>20</sup>, the Law on Public Order and Peace<sup>21</sup>, the Law on Prevention of Violence at Sporting Events and the Law on Public Gatherings.

### - Data

22. According to the Ministry of Justice, between January 2014 and April 2017, 24 cases were adjudicated as possible violations of Article 325, resulting in convictions in 21 cases. Out of these 24 cases, 13 cases concern incitement to violence and hatred on grounds of sexual orientation, seven on national origin, one on ethnic origin, one on religious belief and two on other grounds. As for misdemeanours, the data of the Ministry of Justice shows a total of 37 in 2012, 23 in 2013, 20 in 2014, 12 in 2015 and five in 2016. Out of this total of 97 cases,

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<sup>17</sup> Article 21 (5) of the Gender Equality Act, Official Gazette of Croatia No.82/08, 15 July 2008; Article 25 (5) of the Law on the Ombudsman on Children, Official Gazette of Croatia No.96/03, 29 May 2003. ECRI notes the Law on the Ombudsman on Children was repealed by the Constitutional Court of Croatia on 7 March 2017 (decision no: U-I-4301/2005). An identical rule is also envisaged in the new draft law on the Ombudsperson for Children. The CoE Commissioner for Human Rights expressed his concerns that this draft law risks undermining the institution's independence, CommDH (2017).

<sup>18</sup> According to ECRI's GPR No. 15 on combating Hate Speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

<sup>19</sup> Such as murder (Article 111/4), crimes involving bodily injury (Articles 117-119), coercion (Article 138/2), threats (Article 139/4), inciting riots (Article 324/2), public incitement to violence and hatred (Article 325).

<sup>20</sup> Article 25.

<sup>21</sup> Mostly under Article 6 (exceptionally disorderly behavior) and Article 13 (brawling, rowdiness, shouting).

38 resulted in convictions. Despite the generally good data collection system<sup>22</sup> for hate crime, the available data refers to different stages of proceedings leading to variations in statistics, from which one cannot always clearly understand the bias motivation. It is therefore not possible to accurately report the number of incidents of hate speech as distinct from violence or others. Given the increasing scale of the problem, as demonstrated below, a detailed breakdown of this category would help to better understand trends in these areas.

23. ECRI recommends that the authorities further refine their national data collection system for hate speech incidents, by revising the way data are collected on the criminal offence of incitement to violence and hatred as well as on the application of provisions related to misdemeanours.

- **Hate speech in political and other public discourse**

24. In 2016, the Council of Europe's Commissioner for Human Rights expressed serious concerns about the levels of hate speech and its negative impact on social cohesion.<sup>23</sup> According to the Ombudsperson, ethnic intolerance is growing and the main targets of racist hate speech are Serbs and Roma.<sup>24</sup> Most observers report a heightened nationalist rhetoric in Croatia multiplied with the political instability of recent years and a relaxation in external pressure following EU accession in 2013.

25. In its last report (§ 117), ECRI recommended that politicians on all sides should take a firm and public stand against the expression of racist attitudes. According to the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), some political figures continued to use inflammatory rhetoric to increase inter-ethnic tensions, for example by referring to some minority groups as 'aggressors'.<sup>25</sup> The rise of historical revisionism in the form of praising Second World War ideologies - primarily the fascist Ustaša regime - further escalated this trend. In December 2013, for example, the leader of the far-right Croatian Party of Rights (HSP) sent a message to the director of the Jasenovac Memorial Site<sup>26</sup> with blatantly hateful expressions.<sup>27</sup> The message ended with the Ustaša salute 'Za dom spremni' ('ready for the homeland').<sup>28</sup> ECRI notes that, at a different occasion, the High Misdemeanour Court of Croatia has found the use of this salute to constitute incitement to hatred and the Croatian Constitutional Court upheld this decision.<sup>29</sup>

26. Racist or inflammatory graffiti, featuring Nazi, Ustaša or other symbols, which frequently target members of the Serb minority, is another prevalent form of hate speech in the public domain. Typical messages include 'Kill the Serb' and 'Serbs should hang'. In 2015, the Serbian National Council (SNV) reported that graffiti inciting violence against Serbs is 'still a common phenomenon in the streets of almost all Croatian towns'.<sup>30</sup>

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<sup>22</sup> Indeed, the Protocol for Procedure in hate crime cases (2011) was included in the Compendium of Good Practices for combating hate crime published by the EU Fundamental Rights Agency (FRA) in 2016.

<sup>23</sup> CommDH (2016): 17.

<sup>24</sup> The Summary Report of the Ombudsman (2014): 23.

<sup>25</sup> CoE, FCNM Advisory Committee (2016): 17.

<sup>26</sup> Jasenovac Camp was an extermination camp established by the Ustaša regime during Second World War. In Jasenovac the majority of victims were ethnic Serbs, Jews, Roma, and some political dissidents.

<sup>27</sup> Serb National Council (SNV) (2014): 6. In the message, the director was described as 'the remnants of the corrupted Croatian national tissue [...] condemned to extinction [...]'.  
[...]

<sup>28</sup> While some still present it as patriotic, this slogan was used during the Second World War by the fascist Ustaša regime and is considered an equivalent to the Nazi salute 'Sieg Heil'.

<sup>29</sup> See Decision of the Constitutional Court of the Republic of Croatia, No: U-III-1296/2016, 25 May 2016.

<sup>30</sup> SNV (2016): 76.

27. Various interlocutors indicated that hate speech is not restricted to extremist groups but occurs across the political spectrum, especially around election times. Discriminatory statements occurred on a daily basis, for example, in the run-up to the November 2015 parliamentary elections.<sup>31</sup> Some candidates sought to discredit their opponents by questioning their legitimacy on the grounds of national origin whereas others pledged to ban LGBT associations.<sup>32</sup>

- **Hate speech in the media and on the Internet**

28. Civil society indicated that media outlets play an increasing role in the dissemination of hate speech. Especially in regional print media, coverage is reportedly often negative and based on stereotypes against minorities, targeting mostly Serbs and Roma.<sup>33</sup> Some television channels were also found to contain racist comments, including Zagreb's Z1 TV channel, after presenter Marko Jurić warned viewers not to walk near the Serbian Orthodox Cathedral in Zagreb because 'their children could become victims of Četnik<sup>34</sup> slaughter'.<sup>35</sup>

29. ECRI notes that despite the general positive attitude in welcoming refugees, who are dominantly Muslims, this trend has slightly deteriorated. Reports suggest that media facilitated an increase in islamophobic sentiment among the population<sup>36</sup> by resorting to a sensationalist approach which describes their arrival as an 'invasion'.<sup>37</sup> Stereotypical portrayals of Muslim refugees persist implying that they 'would change Croatian culture with their different mentality'.<sup>38</sup>

30. The issue of cyber hate remains a serious concern. ECRI notes that anonymous inflammatory comments against Serbs, LGBT persons and refugees are commonplace in social networks and user-generated content, such as the comment sections of online news portals, as is abusive language when referring to Roma. For example, the internet portal *dnevno.hr*, which has a rapidly growing audience, has published materials of racist, xenophobic and antisemitic nature on numerous occasions which resulted in warning decisions by the Agency for Electronic Media (AEM).

31. ECRI regrets the increasing influence of historical revisionism (§ 25-26) in social media as well, where materials displaying such content often occur. For instance, in 2015, the SNV recorded 'dozens' of cases in which photographs of individuals wearing Ustaša uniform were posted on Facebook, including a group of secondary school pupils in Split.<sup>39</sup>

- **Hate speech in sports**

32. Sports events have continued to be the fora for recurrent incidents of hate speech. FIFA has repeatedly imposed fines on the Croatian Football Association and banned fans and players<sup>40</sup> over racist behaviour, again mostly linked to the

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<sup>31</sup> European Liberties Platform (2015). NGO GONG conducted monitoring during 1.10 -13.11.2015 and recorded discriminatory statements in 433 newspaper articles, 292 online articles, seven television shows, and one radio show. The overall findings showed that stereotypes were present in various densities, but inflammatory speech by candidates used frequently, mostly against LGBT persons and national minorities.

<sup>32</sup> GONG (2015).

<sup>33</sup> COE, FCNM (2016): 17.

<sup>34</sup> The Serb paramilitary forces during the Second World War.

<sup>35</sup> Balkan Insight (2016a).

<sup>36</sup> Balkan Insight (2016b).

<sup>37</sup> GONG (2015).

<sup>38</sup> European Islamophobia report (2015): 103, 106.

<sup>39</sup> SNV (2016): 83.

<sup>40</sup> Guardian (2015).



expression of nostalgia for the Ustaša regime, during football matches.<sup>41</sup> In June 2015, Croatian fans displayed a swastika during a match against Italy.<sup>42</sup>

33. Homophobic statements by leading figures in sports were also reported.<sup>43</sup> For example, Zdravko Mamic, the then executive manager of the most popular football club and vice president of the Croatian Football Association, stated that 'gay people could not play in his national football team'.<sup>44</sup> Finding these statements discriminatory, the Supreme Court<sup>45</sup> ordered for a public apology.

- **The authorities' response**

34. ECRI considers hate speech particularly worrying not only because it is often a first step in the process towards violence but also because of the pernicious effects it has on those who are targeted and on social cohesion in general. Appropriate responses include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as prevention, self-regulation and counter speech.
35. As for criminal responses, while ECRI commends the available legal framework to combat hate speech (§ 2, 3), it takes note that the cases under Article 325 have been few (§ 22). This could partly be explained by the fact that incidents of hate speech are mainly treated as misdemeanours under the Anti-Discrimination Act and the Law on Public Order and Peace (see also §§ 59-61). For instance, in the case of the message sent to the director of Jasenovac Memorial Site (§ 25), the Kutina Municipal State Attorney concluded that its content did not constitute a criminal offence but only a misdemeanour. On a related note, ECRI applauds the authorities for having removed the plaque with the 'Za dom spremni' salute from a building near the Jasenovac Memorial Site in September 2017.<sup>46</sup>
36. Regarding civil and administrative law responses, hate speech cases processed under the Anti-Discrimination Act often resulted in fines ranging from HRK 200-2 000 (around 25 to 250 euros).<sup>47</sup> In 13 cases, the perpetrators were convicted for the public use of 'Za dom spremni' under misdemeanour liability and received fines of around HRK 700 (around 100 euros).<sup>48</sup> The Ombudsperson emphasised that the use of lighter penalties in sanctioning is almost a regular practice.<sup>49</sup> ECRI notes this trend with concern and draws attention to the legal uncertainty arising from the different sanctioning regimes applicable to hate speech incidents as misdemeanours, as reiterated by the Ombudsperson<sup>50</sup> and NGOs.
37. ECRI further notes that both the Media Act as well as the Electronic Media Act<sup>51</sup> contain provisions prohibiting incitement to hatred based on several grounds, including "race, sex, religion, nationality and sexual orientation".
38. The Agency for Electronic Media Council (AEM), which is an independent regulatory body, oversees compliance with the Electronic Media Act (EMA) and monitors broadcasting. Sanctions for violations in cases of hate speech are temporary or permanent revocation of licence. In January 2016, the AEM

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<sup>41</sup> Balkan Insight (2016c).

<sup>42</sup> Independent (2015). UEFA ordered a fine of €100,000 for this incident.

<sup>43</sup> GONG (2016): 21-23.

<sup>44</sup> EELN (2016): 93.

<sup>45</sup> Decision of the Supreme Court of the Republic of Croatia, Rec-300/13, 17 June 2015.

<sup>46</sup> Balkan Insight (2017d).

<sup>47</sup> On account of harassment under Article 3; see the Annual Report of the Ombudsperson (2015): 28.

<sup>48</sup> Documenta/Center for Peace, Nonviolence and Human Rights – Osijek (2016): 19.

<sup>49</sup> The Ombudsperson (2015), *op.cit.* 28.

<sup>50</sup> See also the Annual Report of the Ombudsperson (2016): 27.

<sup>51</sup> Article 12 (2), Official Gazette of Croatia No. 153/09, 17 December 2009 (amended in No. 136/13).

imposed a three-day broadcasting ban after the hateful remarks on Zagreb's Z1 TV channel (§ see 28). ECRI commends this action. The ban, however, prompted a demonstration outside the AEM offices of around 5 000 people, including the deputy speaker of Parliament, where they called for the AEM President's resignation using offensive language related to her Serbian ethnicity. ECRI deeply regrets that no charges were pressed against protesters, nor any public condemnation made following this incident.<sup>52</sup>

39. Various interlocutors indicated that the AEM has been passive in monitoring and intervened rarely in response to violations of the EMA. This is possibly due to the increasing political pressure it has faced since 2015, curbing its independence.<sup>53</sup> ECRI was informed that from 2013 to 2016, the AEM processed 10 hate speech related cases, where seven of them resulted in warnings and three in charges before the misdemeanour courts. No fine has ever been imposed. ECRI deplors any political interference on the functioning of the AEM and considers that any leniency to sanction intolerant speech might send a wrong signal to media services and ultimately create a culture of impunity.
40. ECRI recommends that (i) the authorities ensure full independence of the Agency for Electronic Media and refrain from any political pressure on this body, (ii) and encourages the Agency for Electronic Media to take firm action in all cases of hate speech and impose appropriate fines to punish, as well as to act as a deterrent against the dissemination of racist and intolerant expressions.
41. As regards awareness-raising for the media and appropriate training, ECRI understands that the AEM has organised seminars on professional ethics and welcomes, in particular, the dedicated round table that took place in April 2016 with NGOs on hate speech and the responsibility of media. ECRI also notes that the Press Council of Journalists, a self-regulatory body, monitors compliance with the Code of Ethics of Journalists. However, reports mention that this Code is neither widely known nor enforced.<sup>54</sup> ECRI considers that more efforts should be made in strengthening ethical journalism and ensuring effective use of self-regulation mechanisms.
42. ECRI recommends that, without interfering with the independence of the media, the authorities encourage the latter to ensure better compliance with ethical standards and to facilitate training to this effect. ECRI also recommends that the authorities initiate an awareness-raising campaign jointly with the media regulatory and self-regulatory bodies as well as civil society on preventing and combating hate speech.
43. ECRI is deeply concerned that hate speech, particularly that linked to nostalgia for the Ustaša regime, is mostly observed among young people. Recent research<sup>55</sup> based on a survey of 1 216 young people aged 16-25, suggests that a breeding ground for populism exists among the youth in Croatia. Given the important role of schools as institutions in which to acquire social skills and fundamental values, such as tolerance and respect for others, ECRI considers that there is a need to engage with the young generation through education which promotes the idea of human rights. ECRI understands that one of the most prominent priorities of the new Strategy for Education, Science and Technology<sup>56</sup>, adopted in 2014, was the comprehensive curricular reform, which includes compulsory civic education. However, political disagreements have slowed down

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<sup>52</sup> International Press Institute (2016): 6.

<sup>53</sup> OSCE (2016); IREX- Media Sustainability Index (2017): 39; The Ombudsperson (2016), *op.cit.* 150.

<sup>54</sup> CoE, FCNM (2016): 17.

<sup>55</sup> Derado, A. et al. (2016).

<sup>56</sup> Official Gazette of Croatia No. 124/2014, 17 October 2014.

the implementation of this Strategy and halted the associated curricular reform.<sup>57</sup> Currently, the contents and topics of civic education are taught in a cross-curricular manner<sup>58</sup> at both primary and secondary school level, through projects, sporadic conferences and extra-curricular activities.<sup>59</sup> In view of growing hate speech and intolerance among young people, ECRI strongly believes that more dedicated and tailored measures should be implemented in the education system with a view to tackle all forms of intolerance and to promote inclusive democracy in the society.

44. ECRI recommends that the authorities introduce compulsory human rights education as part of civic education into all school curricula, especially as regards the right to equality and the prohibition of discrimination. Appropriate text books should be developed and teachers should continue receiving the necessary training in these subjects.
45. ECRI considers that political and public figures should take a strong stand against intolerant statements by means of counter speech, even if such statements do not reach the level required for criminal sanctions. ECRI has little evidence that opinion leaders engage actively in counter speech in contrast to significant efforts made by civil society.<sup>60</sup> Albeit rare, there are some examples of good practice. For instance, in May 2016, the Croatian President Kolinda Grabar-Kitarović responded to the rise in hate speech by publicly condemning the Ustaša regime and calling for inter-ethnic tolerance.<sup>61</sup>
46. ECRI recommends that the authorities should condemn hate speech and promote counter-speech by politicians and high-ranking officials. All political parties in the country should also condemn hate speech and call on their members and followers to abstain from using it.
47. As regards the Internet, ECRI is pleased to note the designation of a 24/7 contact point for cybercrime within the High Tech Crime Department of National Police. Reports suggest, however, that the editorial responsibility for online posts is not sufficiently understood by many internet portals and illegal content is not taken down and removed in a timely manner. ECRI therefore considers that the authorities, in cooperation with NGOs, regulatory bodies and other stakeholders, such as journalists' associations, should develop a strategy on combating cyber hate speech that includes, *inter alia*, training for website operators. Schools should also pay more attention to cyber bullying among pupils and develop measures to prevent and counter this kind of hate speech.<sup>62</sup> In this context, ECRI takes positive note of the national campaign entitled 'NO to Internet Hate Speech' aimed at children and young people, as part of Croatia's participation in the Council of Europe's (CoE) No Hate Speech Movement.<sup>63</sup>

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<sup>57</sup> European Commission (2016a); Balkan Insight (2017c).

<sup>58</sup> Decision on the Adoption of Programmes for Cross-Curricular and Interdisciplinary Contents of Civic Education for Primary and Secondary Schools (Official Gazette of Croatia No: 104/2014, 28 August 2014)

<sup>59</sup> ECRI welcomes the introduction of civic education as a separate course on an experimental basis since 2014. So far, this experimental programme was implemented in 34 schools.

<sup>60</sup> For example, the project run by two NGOs, GONG and Human Rights House Zagreb, called 'Dosta je mržnje' (Enough hate). <http://www.dostajemrznje.org/>

<sup>61</sup> Total Croatia News (2016).

<sup>62</sup> See II.2-h of the ECRI General Policy Recommendation No.10: Combating racism and racial discrimination in and through school education.

<sup>63</sup> <http://www.dislajkamrznju.hr/>

### 3. Racist and homo/transphobic violence

#### - Data

48. The Office for Human Rights and Rights of National Minorities (OHRRNM) is the central body gathering data on hate crimes, including the use of hate speech, from three institutions: the Ministry of Interior, the State Attorney's Office and the Ministry of Justice, pursuant to the Protocol for Procedure in hate crime cases ('Hate Crime Protocol'). As of 2015, hate crime data are published on the website of the OHRRNM and are also regularly reported to the OSCE/ODIHR.<sup>64</sup> The authorities informed ECRI that the police recorded 26 hate crime incidents in 2012; 35 in 2013; 22 in 2014; 24 in 2015 and 35 in 2016. Out of these 142 total incidents,<sup>65</sup> 74 concerned violence against persons or property and were prosecuted, primarily under Article 235 (endangering property) and 117-119 (bodily/serious bodily injury) of the Criminal Code, whereas 43 cases were processed as threats (Article 139). ECRI notes that only in 18 cases, Art. 87 (21) (aggravating circumstance) on hate crime (§ 3, 21) was applied.
49. In contrast to official data, the data provided by the NGOs indicate higher number of cases of hate crimes. According to the SNV, 331 cases of ethnically-motivated violence, threats, and hate speech against Serbs were recorded in 2016, up from 189 cases recorded in 2015 and 82 in 2014.<sup>66</sup> While diverging methodologies for the registration of hate crimes may result in this discrepancy, the Ombudsperson underlined that these data should not be ignored, since hate crime victims often only report incidents to NGOs due to a lack of trust in or fear of the authorities.<sup>67</sup>

#### - Racist violence

50. Reports<sup>68</sup> point to an increase in violence against the members of Serbian minority since 2012, attributing this to a rise in historical revisionism and the implementation of policies supporting the use of minority languages<sup>69</sup>, including the use of Cyrillic script. Violent incidents are most common in areas affected by the war, where the majority of Serb returnees now live.<sup>70</sup> In 2014, for example, customers of a cafe in Vukovar, a border town with a large Serbian minority population, were assaulted and the owners sustained serious injuries.<sup>71</sup> In 2016, the SNV reported sixteen cases of violence, including attacks against journalists and human rights activists.<sup>72</sup> Several incidents of damage to property have also been reported, mostly concerning bilingual signs featuring Cyrillic scripts<sup>73</sup>, religious buildings and cemeteries. The Serbian Orthodox Church estimated that it suffered 20 incidents of vandalism in 2016.<sup>74</sup>
51. ECRI notes with particular concern that Roma continue to be the targets of racially motivated violence.<sup>75</sup> ECRI would like to draw attention to the recent judgement of the European Court of Human Rights (ECHR), *Škorjanec v Croatia*<sup>76</sup>, which concerned physical assaults suffered by the applicant and her

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<sup>64</sup> OSCE-ODIHR, Hate Crime Reporting: Croatia, <http://hatecrime.osce.org/croatia>

<sup>65</sup> During the period between 2012 and 2016.

<sup>66</sup> SNV (2017): 123.

<sup>67</sup> CommDH (2016): 17.

<sup>68</sup> US Department of State (2016a): 14-15; Balkan Insight (2017b).

<sup>69</sup> SNV (2015): 43.

<sup>70</sup> SNV (2016): 93; see also the Ombudsperson (2015), *op.cit.*:39.

<sup>71</sup> SNV (2015): 48.

<sup>72</sup> SNV (2017): 145.

<sup>73</sup> Radio Free Europe/Radio Liberty (2013).

<sup>74</sup> US Department of State (2016b):6.

<sup>75</sup> Similar observations were made by the UN Human Rights Committee. See UN HRC (2015): 9.

<sup>76</sup> ECtHR (2017).

partner of Roma origin. Having found a violation of Article 3 (prohibition of inhuman and degrading treatment) in conjunction with Article 14 (prohibition of discrimination) of the Convention, the ECHR held that the Croatian authorities failed to effectively investigate a racially motivated act of violence against a victim by association.<sup>77</sup> Besides, various stakeholders emphasised that most violent incidents in areas surrounding Roma settlements are not reported, due to the limited trust and mutual understanding between the community and the police and claimed that ethnic profiling practices are increasing.<sup>78</sup>

52. More recently, albeit rarely, asylum seekers and refugees have been the targets of racist violence. In December 2015, a black man from Cameroon was assaulted with a knife.<sup>79</sup> The police were reportedly quick to arrest the attackers and proceedings were initiated. In addition, on New Year's Eve in 2016, unidentified persons attacked several asylum seekers outside the Porin Reception Center in Zagreb<sup>80</sup> which was allegedly not followed up by any police action.

- **Homo-/transphobic violence**

53. A study on the basis of data obtained from LGBT persons in three Croatian cities<sup>81</sup> revealed that 68% of participants had experienced some forms of violence and 8.1% suffered violence resulting in bodily injury. The same study indicates that only 7.7% of participants reported violence to the police.
54. In 2015, the UN Human Rights Committee expressed its concerns about the reports of violence against LGBT persons.<sup>82</sup> In its last report, the Ombudsperson for Gender Equality also made similar remarks and underlined the worrying rise in the inefficiency of the judicial system with regard to its response to hate-motivated crimes against LGBT persons.<sup>83</sup> In 2015, for example, the Municipal Court in Split acquitted three men standing trial for a homophobic attack against six women in 2012. The victims alleged that the local police had threatened them while filing their complaint and had failed to investigate the crime effectively.<sup>84</sup> In February 2017, a LGBT club in Zagreb was attacked with tear gas.<sup>85</sup> ECRI welcomes the authorities' swift reaction, who strongly condemned this incident and the subsequent investigation that was promptly initiated.

- **The authorities' response**

55. In its fourth report (§ 129), ECRI strongly recommended that the Croatian authorities ensure that all acts of racist violence are promptly and thoroughly investigated with a view to prosecution of the perpetrators. ECRI notes that some measures have been taken to this end, as pointed out below, but these cannot be considered fully satisfactory and hence it encourages the authorities to continue and intensify their efforts.
56. ECRI recalls the legal framework as noted in §§ 2, 3 above. It also takes positive note of the amendments to the CC in 2015 which introduced a new provision

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<sup>77</sup> § 66 of the judgment reads as follows: "...the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence exists not only with regard to acts of violence based on the victim's actual or perceived personal status or characteristics but also with regard to acts of violence based on the victim's actual or perceived association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic..."

<sup>78</sup> See also COE, FCNM (2016) *op.cit.* 19.

<sup>79</sup> The Ombudsperson (2015), *op.cit.*44.

<sup>80</sup> UNHCR (2017b):8.

<sup>81</sup> Milković (2013): 33, 40-41.

<sup>82</sup> UN HRC (2015), *op.cit.* : 10.

<sup>83</sup> The Annual Report of the Ombudsperson for Gender Equality (2016): 159.

<sup>84</sup> Amnesty International (2016): 131.

<sup>85</sup> Balkan Insight (2017a).

under Article 323a that criminalizes violent conduct in public places. The authorities informed ECRI that work is ongoing to amend the 'Hate Crime Protocol'. Furthermore, it welcomes the instruction<sup>86</sup> issued by the State Attorney's Office in August 2016, which is binding on all state attorneys, on the work on hate crimes with a view to ensure keeping of their records and treating them with special diligence and urgency. In this connection, ECRI regrets to note that after the expiration of the National Plan for the Protection and Promotion of Human Rights (2013-2016), which included a wide range of measures to combat racial discrimination and intolerance at many levels, political instability in the country has halted the earlier initiatives<sup>87</sup> in drafting a new one. The National Plan for Combating Discrimination (2017-2022) was finally adopted on 1 December 2017. According to the information provided by the authorities, one of the priorities of its first Action Plan (2017-2019) is to provide dedicated training on non-discrimination for several groups, including police and public officers. ECRI commends this.

57. Since ECRI's last report, specialised training on hate crime was integrated into the police training curriculum and further training was provided through several projects involving police and NGOs.<sup>88</sup> Moreover, in 2015 and 2016, seminars have been organised by the Judicial Academy on the application of anti-discrimination and hate crime legislation. While these activities have helped enhance the capacity of law enforcement bodies, it has often been stressed that the police, state prosecution and judiciary continue to experience problems in identifying hate crime/speech and applying the legislation and that the in-service training to remedy this situation is insufficient.<sup>89</sup> Considering the drastic cut in the Judicial Academy's budget (it was reduced by 72% from 2011 to 2016, and only 28.57% of the budget in 2016 was spent on training<sup>90</sup>), ECRI notes that there is no sustainable training and the existing training activities are only available on an *ad hoc* or project basis for those who are interested.
58. ECRI recommends that the training activities for law enforcement officials and the judiciary on hate crime are scaled up. Such training should cover racist and homo-/transphobic hate crime as well as ethnic profiling. ECRI also recommends that the authorities carry out an impact assessment to evaluate the training to establish to what extent it helps hate crime to be identified effectively and, if necessary, adjust it.
59. Particular concerns have also been expressed about the insufficient application of the legal framework.<sup>91</sup> ECRI's delegation was informed that hate-motivated violence has not always been classified consistently and that the bias motivation is not clearly specified. Similar to the hate speech cases (§ 35), the majority of cases reported, especially the violent attacks against LGBT persons<sup>92</sup>, have been treated as misdemeanour offences under the Law on Public Order and Peace, mostly resulting in fines below the legal minimum. Reports<sup>93</sup> suggest that misdemeanour prosecution has become the judicial practice for hate motivated violence with the intention of achieving faster prosecution.
60. Reiterating the crucial importance of effective investigation and prosecution as well as deterrent sanctioning of perpetrators, ECRI notes the above practice with

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<sup>86</sup> Instruction no. O-11/06.

<sup>87</sup> The working group which had worked on a draft over two years was dissolved after the 2016 elections.

<sup>88</sup> ECRI (2015).

<sup>89</sup> Bodiroga-Vukobrat et al (2016): 206.

<sup>90</sup> The Ombudsperson (2016), *op.cit.* 14.

<sup>91</sup> COE, FCNM (2016) *op.cit.* 19;

<sup>92</sup> Amnesty International (2012).

<sup>93</sup> The Ombudsperson for Gender Equality (2016), *op.cit.* 160-161.

concern and considers that lack of prosecution might send a message of impunity. ECRI therefore underlines once again the importance of the proper qualification of hate crimes and urges the authorities to improve the knowledge and expertise among the responsible law enforcement agencies in understanding and recognising hate crime dynamics. On a related note, ECRI wishes to point out several cases that have been brought to its attention in which the misdemeanour proceedings resulted in fines, preventing the conduct of criminal proceedings for hate crime on the basis of *non bis in idem* principle.<sup>94</sup> ECRI considers that these cases prove the need to establish clear standards in the treatment of hate motivated cases and ensure the effective functioning of the justice system against those acts. In this respect, ECRI refers to the case-law of the ECHR which obliges states to take all reasonable steps to establish whether violent incidents were racially motivated.<sup>95</sup>

61. ECRI recommends that a racist and/or homo-/transphobic motivation in cases of violent incidents is made an integral part of investigations, particularly through providing clear guidelines between the police and State Attorney's Office, as well as judicial proceedings from their very beginning. ECRI also recommends that the authorities continue training to police, judges and prosecutors on the application of Article 87 (21) of the Criminal Code.

62. Lastly, ECRI endorses the setting up of the Crime Prevention Unit within the Ministry of Interior, which has run several awareness-raising activities in cooperation with civil society, primarily targeting Roma<sup>96</sup> and LGBT. ECRI considers these initiatives as very positive steps in tackling the problem of under-reporting that has been frequently observed among those groups.

#### 4. Integration policies

##### - Data

63. Among the 22 national minorities<sup>97</sup> that the Constitution enumerates, Serbs are the largest minority with 4.36%<sup>98</sup> according to the 2011 census. ECRI notes that the majority of returnees, who fled the country during the war of 1991-1995 and returned afterwards, belong to the Serb minority.

64. While Croatia does not currently have an overall integration strategy covering all minorities, the Action Plan (2011-2013) for the implementation of the Constitutional Act on the Rights of National Minorities,<sup>99</sup> as well as the National Plan for the Protection and Promotion of Human Rights (2013-2016) included measures aiming to strengthen the inclusion of national minorities.<sup>100</sup> The Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) stated in its latest opinion that although the legislative framework pertaining to minorities in Croatia remains favourable, a surge in nationalism is having a negative impact on the enjoyment of these rights.

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<sup>94</sup> In light of the ECHR judgment *Maresti v. Croatia* (no. 55759/07, 25 June 2009). ECRI notes that there is a pending case on the same matter before the ECHR regarding a brutal attack on an LGBT person. This case resulted in misdemeanour proceedings with the perpetrator sentenced to a 40 euro fine. No criminal proceedings could be initiated. See *Sabalić v. Croatia* (no. 50231/13, communicated on 7 January 2014).

<sup>95</sup> *Nachova and others v. Bulgaria* [GC], nos. 43577/98, 43579/98, 6.7.2005, §§ 160-168.

<sup>96</sup> The National Project – I have a Choice.

<sup>97</sup> These collectively constitute 7.67% of the total population.

<sup>98</sup> Croatian Bureau of Statistics (2011).

<sup>99</sup> Official Gazette of Croatia no. 155/2002, 13 December 2002.

<sup>100</sup> For further details on issues concerning national minorities, please consult the Fourth Opinion on Croatia (2016) of the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM).

65. According to UNHCR data, between 2004 and the end of 2015, a total of 219 persons were granted international protection (145 refugee status and 74 subsidiary protection) in Croatia. In 2016, the authorities recorded 2 235 asylum seekers, which signify a considerable increase compared to 211 in 2015. Out of 2 235 applicants in 2016, 99 persons were granted international protection (84 refugee status and 15 subsidiary protection). Croatia further agreed to receive 1 583 refugees under the EU relocation and resettlement scheme.<sup>101</sup>
66. In the following paragraphs, ECRI will focus on the social integration of three groups: Roma; returnees and refugees and beneficiaries of subsidiary protection.
- **Roma**
67. Roma remain the most vulnerable and marginalised group in Croatia. Based on the 2011 census, the Roma population amounts to 16 975 people, but the real number is estimated between 30 000 and 40 000 due to incomplete registration.<sup>102</sup> The country has invested significant efforts into improving the inclusion of Roma through the National Roma Inclusion Strategy (NRIS) from 2013 to 2020 and the Action Plan for its implementation (2013-2015) (the Action Plan), which are the latest in a series of strategic documents. ECRI welcomes the fact that both documents comprise a comprehensive strategy covering four 'crucial areas'<sup>103</sup> - education, employment, health and housing - as well as other fields such as social welfare, legal status, prevention of discrimination and statistical data collection. However, ECRI notes with regret that the Action Plan for 2016-2018 has still not been adopted although it has been informed that a draft Action Plan (2017-2019) is being developed.<sup>104</sup>
68. The first and so far only evaluation report on the implementation of the Action Plan 2013-2015 was published in June 2015. This report found that state budget spending on the Action Plan was higher than originally planned, but nevertheless uncovered problems, primarily in data collection, lack of availability of baseline data, the prioritisation of activities and the role of local authorities.<sup>105</sup> As often expressed by civil society representatives to ECRI, the report also revealed that despite having well-defined measures, the NRIS lacks concrete timeframes and indicators of success to measure progress.<sup>106</sup> In addition, most of the measures do not clearly specify sources of funding. The available data suggests that earlier strategies have resulted in significant and visible, yet insufficient changes.
69. While ECRI takes positive note of the importance given to the close monitoring of the NRIS to ensure its effective implementation and the Monitoring Commission<sup>107</sup> established in 2013 to this effect, both the evaluation report and remarks from civil society point out that this Commission has not actively engaged in monitoring the NRIS.<sup>108</sup> Its role has been limited to reviewing reports prepared by the Office for Human Rights and Rights of National Minorities (GOHRRNM), the central body which has a largely coordination role in relation to

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<sup>101</sup> UNHCR (2017).

<sup>102</sup> OSCE ODIHR (2014): 22.

<sup>103</sup> As defined in EU Framework for National Roma Integration Strategies up to 2020.

<sup>104</sup> According to information provided by the authorities, it is expected to be adopted in April 2018.

<sup>105</sup> Friedman/Horvat (2015).

<sup>106</sup> Only 19 out of 128 measures contain concrete deadlines.

<sup>107</sup> Under NRIS, the Monitoring Commission is also responsible for preparing revised policy documents (e.g. Strategy and/or Action Plan) for adoption by the government.

<sup>108</sup> ECRI notes that the work of the Commission was also interrupted due to government changes as its mandate is limited to the terms of the government which has appointed it. There were therefore no working sessions in 2016 and most of 2017. The new Commission was appointed only on 26 October 2017.



the implementation of the NRIS.<sup>109</sup> In addition, several measures under the NRIS are implemented through EU funded projects by local authorities or NGOs that do not always involve members of the Roma community. Similarly, local and regional self-government units have not been sufficiently involved in the implementation of the NRIS<sup>110</sup> and hence, little attention has been paid to the actual implementation of measures at local level.

70. ECRI recommends that the authorities ensure that the National Roma Inclusion Strategy (2013-2020) is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive equality data. The strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with regional and local authorities as well as members of the Roma community and adequate funding should be allocated for the strategy to be effective.
71. As various reports indicate, a significant number of Roma in Croatia still lacks identity documents.<sup>111</sup> This hinders their access to rights such as employment and health care.<sup>112</sup> Although accurate figures do not exist, it is estimated that there are at least 500 stateless Roma and at least 1 000 Roma at risk of being stateless. The NRIS aims to fully regulate the legal status of all Roma by 2020.<sup>113</sup> To this end, the Ministry of the Interior has, as of 2014, established mobile teams to resolve status issues in nine counties and the City of Zagreb.<sup>114</sup> ECRI regrets to note that these teams have not been operational as yet.
72. Moreover, while ECRI welcomes the amendments to the 2012 Aliens Law adopted in 2013 with a view to simplifying conditions for obtaining temporary or permanent residence, such as abolishing the requirement for applicants to present a property ownership certificate,<sup>115</sup> Roma still face serious obstacles to obtaining personal identity documents, primarily due to the lack of effective access to legal aid and high administrative fees. ECRI notes that since 2016, the UNHCR, in cooperation with civil society, has been assisting Roma in this matter. Recalling measures under the NRIS, ECRI invites the authorities to assume full responsibility in solving the legal status of Roma with dedicated resources.
73. As regards education, ECRI positively notes the progress made in the educational inclusion of Roma children through different measures, including removing the requirement of regulated status for enrolment in primary and secondary schools,<sup>116</sup> providing scholarships for secondary school and university students<sup>117</sup> and after-school programmes offering extra tuition.<sup>118</sup>
74. ECRI considers that early childhood education is an important determinant of future life opportunities. Providing Roma children with an equal start in life with their non-Roma peers is essential to break the cycle of intergenerational

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<sup>109</sup> GOHRRNM is tasked with initiating, coordinating, conducting evaluations and is the responsible institution for 44 of 128 planned measures, considerably more than any other government body.

<sup>110</sup> By March 2015, only five of the 33 local/regional units had developed and implemented action plans as required by NRIS.

<sup>111</sup> Decade of Roma Inclusion 2005-2015 (2014): 35.

<sup>112</sup> Sikic-Micanovic et al. (2015): 40; and Decade of Roma Inclusion 2005-2015 (2014): 35.

<sup>113</sup> Government of the Republic of Croatia (2012): 111.

<sup>114</sup> Decade of Roma Inclusion 2005-2015 (2014): 36.

<sup>115</sup> CommDH (2016): 16.

<sup>116</sup> CAHROM (2014): 13.

<sup>117</sup> Sikic-Micanovic et al. (2015): 57

<sup>118</sup> Ibid: 76. The same study however indicates that these programmes have been of limited availability due to a lack of classroom space and teaching staff, *op.cit*:14.

transmission of poverty.<sup>119</sup> Increasing Roma attendance at pre-school facilities and enabling them to learn the Croatian language before entering primary school is thus instrumental to counter segregation and to ensure the inclusion of Roma pupils in mainstream schools. In this respect, ECRI commends the introduction of free pre-school education in the year preceding enrolment in primary school with an emphasis on language instruction.<sup>120</sup> Although an increase in the number of Roma enrolled in pre-school has been reported, from 769 children in the 2013-2014 school year to 873 children in the 2014-2015 school year,<sup>121</sup> just 32% of Roma children aged between four and six years attended pre-school (compared to 72% among the general population) in 2016.<sup>122</sup> Because the organisation of pre-schools is left to local authorities,<sup>123</sup> significant variations in length and quality of pre-school programmes is reported<sup>124</sup> and there has been no systematic mechanism established to secure the uniform quality of these programmes.<sup>125</sup>

75. ECRI recommends that the authorities evaluate the inclusion of Roma children in the existing pre-school programmes with a view to increasing their participation. They should also evaluate whether these programmes provide equal access to education and quality teaching.

76. ECRI welcomes the fact that the number of Roma children enrolling in compulsory primary school<sup>126</sup> is as high as in the general population and stands at 95% but regrets that the enrolment rate drops significantly at secondary school level and is only 35% (compared to 86% among the general population).<sup>127</sup> According to a UNDP Survey in 2014, only 10% of Roma children complete secondary school.<sup>128</sup> In the absence of strategic documents to specifically tackle school drop-out, several related measures were envisaged under the framework of the NRIS, including providing training to and recruiting Roma assistants, as also encouraged by ECRI in its last report. Although the importance of Roma assistants has been emphasised by school staff and Roma parents alike,<sup>129</sup> their numbers have decreased from 25 to 23<sup>130</sup> since ECRI's last report. Given that there is no systematic monitoring mechanism for drop-outs in all schools across the country, ECRI wishes to point out the crucial role played by Roma assistants in following up such cases and acting as intermediaries between schools and Roma families, as it witnessed in the Capraške Poljane Roma settlement during its contact visit. ECRI was told, though, that no salary was paid to the Roma assistants. ECRI considers that the integration of Roma assistants in schools in a more sustainable manner, including paying a salary, would bring fruitful results in reducing the risk of drop-out.

77. ECRI recommends that the authorities establish an effective monitoring mechanism for drop-outs at primary and secondary school level to ensure Roma children's attendance and decrease the risk of dropping out.

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<sup>119</sup> World Bank (2012).

<sup>120</sup> Government of the Republic of Croatia (2012): 40-41.

<sup>121</sup> Friedman/Horvat (2015): 47.

<sup>122</sup> FRA, EU-MIDIS II, Roma (2016): 23.

<sup>123</sup> 1 170 out of the total of 1 534 kindergartens are established by local authorities. REF (2014):13.

<sup>124</sup> ECRI positively notes the City of Rijeka providing two years free of charge pre-school and projects run by the authorities of Međimurje County to increase preschool attendance with free transport and meals.

<sup>125</sup> Sikic-Micanovic et al. (2015) :13-14

<sup>126</sup> This lasts eight years and is free for all children from the age of six to fifteen.

<sup>127</sup> FRA, EU-MIDIS II, Roma (2016): 25.

<sup>128</sup> CoE, FCNM (2016): 25.

<sup>129</sup> Sikic-Micanovic et al. (2015): 75-76.

<sup>130</sup> Most of them (21) are financed by the Ministry of Science, Education and Sports, while two are financed by local authorities.

78. Another area of concern is the segregation of Roma pupils, which the ECHR drew attention to in *Oršuš and others v. Croatia*<sup>131</sup> in 2010. ECRI takes positive note of the steps taken to execute<sup>132</sup> this judgment as well as the measures envisaged under the NRIS to eliminate potential segregation in schools, including free pre-school education (§ 74), extra language tuition for Roma pupils in primary schools<sup>133</sup> and various local initiatives such as the bussing of children to different schools in order to avoid the concentration of Roma children in a single school.<sup>134</sup> For example, in the City of Kutina, the authorities provided funds for covering the costs of transportation of children in order not to exceed 30% of Roma children per class. Noting these efforts with satisfaction, ECRI is still concerned about the current situation on the basis of recent data indicating that 40% of all Roma children aged 6-15 years attend classes where all or most of their classmates are Roma.<sup>135</sup> While ECRI is aware that Roma-only classes are present particularly in areas of *de facto* residential segregation<sup>136</sup> due to Roma living in remote places away from the general population, it strongly reiterates its recommendation to the authorities to properly implement the desegregation measures with a view to ensuring inclusive education.
79. Another negative factor for Roma integration is their limited and unequal access to employment. According to a FRA EU-MIDIS survey published in 2016<sup>137</sup>, 62% of Roma are unemployed (compared to 10,6%<sup>138</sup> of the general population). Roma mostly trade in the informal economy, do seasonal work or work as cleaners in public utility companies. Against these limited areas of activity, ECRI takes positive note of the efforts of the Croatian Employment Bureau (CEB)<sup>139</sup> to increase the access of Roma to the labour market, through vocational and on-the-job training as well as public works programmes<sup>140</sup>, and assistance in registering Roma in active employment policies. ECRI also notes with interest the introduction of self-employment subsidies, covering the cost of starting a business, from which four persons benefitted in 2015. The continuous support of the CEB by paying visits to potential employers and sharing information on the employment opportunities for unemployed Roma are also worth mentioning.
80. Although these measures have had a positive impact on the employability of Roma, considering that 77% of young Roma aged 16-24 years are neither in work nor in education or training, ECRI encourages the authorities to endorse

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<sup>131</sup> ECtHR (2010). Croatia was found to be in violation of the Convention for placing Roma children in segregated Roma-only classes due to their limited command of the Croatian language.

<sup>132</sup> ECRI notes that the Committee of Ministers of the Council of Europe (CoE) closed this case in November 2017 as the main measures had been adopted. See Resolution CM/ResDH(2017)385.

<sup>133</sup> Sikic-Micanovic et al. (2015): 14. However, a research report argued that these classes reportedly take the form of translation rather than authentic bilingual education, and places children in “segregated microenvironments” within classrooms. See Harvard University, (2015): 13.

<sup>134</sup> Decade of Roma Inclusion 2005-2015 (2014): 5

<sup>135</sup> FRA, EU-MIDIS II, Roma (2016): 28. ECRI also notes that at national level, the number of Roma-only classes increased from 50 in 2012, to 56 in 2013 and to 61 in 2014. See Friedman/Horvat, (2015): 54.

<sup>136</sup> Friedman/Horvat (2015): 13.

<sup>137</sup> FRA, EU-MIDIS II, Roma (2016): 18-19.

<sup>138</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics)

<sup>139</sup> ECRI was informed by the state authorities that although CEB does not disaggregate labour market data by ethnicity, it still creates a data set on the basis of residence of registered unemployed persons, certificates submitted for acquiring social welfare benefits, and knowledge of Roma language. As of December 2016, the CEB listed 4 777 persons of Roma origin as unemployed in its records.

<sup>140</sup> In 2016, a total of 628 Roma persons (241 women) were employed. ECRI welcomes the legal amendments of March 2017 making possible to continue receiving basic social allowance while working under this scheme.

more innovative measures, particularly in reaching out to private employers, to increase the economic empowerment of this group.<sup>141</sup>

81. On a related note, ECRI finds it striking that only nine Roma persons are employed as civil servants in the country. In addition to the reluctance of Roma to declare their ethnicity, reports continue to suggest that state institutions tend to overlook implementing the positive action measures for minorities in employment.<sup>142</sup> In view of the ongoing public employment service reform, ECRI considers that the authorities should take a more targeted approach to break the vicious circles of unemployment of Roma.
82. ECRI recommends that the authorities increase the number of Roma who work in the civil service through effective implementation of the positive action measures available in the legal framework.
83. As far as health is concerned, the introduction of Roma health mediators has been a significant step that has helped to provide direct support in accessing health care services.<sup>143</sup> Nevertheless, available data indicate that around 18% of Roma aged 16 and over lack health insurance<sup>144</sup> and one fifth of Roma children may not have access to health care. While the Health Insurance Act provides several routes to health insurance, including through employment or through a policy holder in the family, members of the Roma community often do not register due to insufficient knowledge of the system, or because they lack legal status.<sup>145</sup> Furthermore, for those who are in the social welfare system, the cost of HRK 400 (around 52 euros) as the monthly contribution represents a significant financial outlay which is difficult to afford.<sup>146</sup> ECRI draws attention to the fact that while the NRIS aims to ensure 100% access to health services for Roma by 2020, it fails to offer concrete measures to this end.
84. Concerns have also been expressed about Roma women continuing to face various obstacles in access to health care. Data suggest that 21% of Roma women have never had any health insurance, other than access to public support for expectant mothers.<sup>147</sup> ECRI was also informed that early marriages are still a phenomenon among Roma,<sup>148</sup> which is likely to lead to specific health issues. ECRI recalls that Roma girls and women are particularly vulnerable to inadequate access to health care due to the intersectionality of ethnicity, gender and poverty. It encourages the authorities to place greater focus on these groups.

- **Returnees**

85. According to the authorities and the UNHCR, by January 2017, 134 000 Serbs had returned to Croatia (more than half of those who fled the country before 1995). While the overall conditions conducive to return are positive, ECRI notes that returnees continue to experience problems in accessing rights, particularly in the fields of housing and health care, as well as in issues relating to legal status and access to legal aid. ECRI was informed about some extreme cases by civil society, that include areas in Slavonia where access by returnees to public services such as electricity, gas and water is intermittent and where no

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<sup>141</sup> On a similar note, see EU Commission (2016): 46.

<sup>142</sup> Friedman/Horvat (2015): 53.

<sup>143</sup> UN, Human Rights Council (2017): 18.

<sup>144</sup> FRA, EU-MIDIS II, Roma (2016): 30.

<sup>145</sup> Government of the Republic of Croatia (2012): 59-61.

<sup>146</sup> The Annual Report of the Ombudsperson (2015): 41.

<sup>147</sup> UN, Human Rights Council (2017): 18.

<sup>148</sup> 60% of Roma women enter non-marital unions at the age of 13 or 14, and already become mothers by the age of 15. See Government of the Republic of Croatia (2012): 63; CEDAW (2015): 36.

investment into the severely damaged infrastructure appears to have been made since the end of 1995.

86. As pointed out by the CoE Commissioner,<sup>149</sup> returnees have had to assume a cumbersome financial burden while obtaining citizenship or regularising their residence status in often lengthy and overly bureaucratic procedures. In many cases, the UNHCR has assisted the most vulnerable returnees with free legal aid and partial coverage of administrative fees.<sup>150</sup> In this connection, ECRI notes that the funding allocated to NGOs - as authorised providers under the Law on Free Legal Aid<sup>151</sup> - for providing primary legal aid are not sufficient and it deeply regrets the drastic decrease in funding (a decrease of 50% in 2016 compared to 2015).<sup>152</sup> Moreover, it was brought to ECRI's attention that in 2016, these NGOs were not allowed to assist beneficiaries in covering the necessary administrative fees, but only in representation in administrative proceedings. Available funds were allocated with significant delays, placing the providers at a disadvantage.<sup>153</sup> ECRI is of the opinion that such issues have adversely affected returnees in resolving their legal status, which is closely linked to their reintegration.
87. ECRI recommends that the authorities increase the budget for primary legal aid and put in place efficient mechanisms to ensure timely disbursement of funds. Primary legal aid providers should also be able to cover administrative fees for beneficiaries.
88. As for housing, the national Housing Care Programme (HCP) in Croatia, which began to cover returnees in 2006, includes provision of housing solutions for former Occupancy/Tenancy Right Holders (OTR) of all ethnicities. ECRI is pleased to note that since 2013, the authorities have taken further legislative steps to ensure access to adequate housing for returnees, such as the Decision on Housing Care for Returnees- former OTR holders outside the Areas of Special State Concern and of the Decision on Purchase of State Owned Apartments in urban areas. According to UNHCR, as of March 2016, 17 500 applications under the HCP were lodged, of which 8 930 were successful and some 8 200 persons have received housing care. 150 000 housing units have also been reconstructed under the state reconstruction programmes.
89. The continuing backlog in implementation of the HCP remains a matter of concern. Croatia has a total of 2 443 pending requests for housing care submitted by the former OTR holders, 1 278 pending requests for reconstruction and 6 176 pending requests for housing care.<sup>154</sup> While ECRI welcomes the progress made in 2016 that resulted in the finalisation of a total of 798 requests (93 positive and 705 negative), it considers that the authorities should make further efforts to increase the state allocated funds to finalise the remaining pending cases.

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<sup>149</sup> CommDH (2016):14.

<sup>150</sup> From November 2014 to June 2015, the UNHCR and its three legal aid partners assisted some 200 returnees in regularising their status in Croatia.

<sup>151</sup> This law entered into force on 1 January 2014.

<sup>152</sup> The Ministry of Justice has reduced by half the 2016 funding allocation (750 000 HRK or 100 000 EUR) to NGOs for primary legal aid in comparison to 2015 (one and half million HRK or 200 000 EUR).

<sup>153</sup> Since allocated funds were not sufficient, the UNHCR continued to fund three NGOs that provide free legal aid. NGOs assisted 2 998 beneficiaries in the second half of 2016.

<sup>154</sup> UNHCR (2017a).

- **Refugees and beneficiaries of subsidiary protection**

90. Although Croatia is still perceived as a transit country,<sup>155</sup> the number of refugees and beneficiaries of subsidiary protection is growing. According to the data provided by the Ministry of Interior, as of April 2017, there are 599 refugees, asylum seekers and migrants in Croatia housed in two reception centres located in Zagreb and Kutina. 128 out of this total number are children.
91. The Government adopted a Migration Policy for 2013-2015 with seven chapters on: visa policy; status issues (permits for entry, stay and employment of foreigners); Croatian citizenship; asylum; integration policy; irregular migration; and the Croatian diaspora. An Action Plan for removing obstacles to the integration of foreigners for 2013-2015 was also adopted, with a focus on refugees and beneficiaries of subsidiary protection. ECRI was informed that the Action Plan for the integration of persons who have been granted international protection (2017-2019) was adopted in November 2017 and consists of the following chapters: social welfare and healthcare; accommodation and housing; language learning and education; employment; international cooperation; inter-departmental cooperation; and sensitisation of the public and professionals to persons who have been granted international protection. However, it has not received any further details.
92. With regard to the evaluation of the outcomes of previous integration policies, regrettably, there is no specific system of integration indicators in place. ECRI considers that this absence makes it difficult to assess the situation of refugees, to monitor the results of integration policies and to develop objectives and targeted activities to reduce discrimination and foster equality. In this regard, ECRI draws attention to the fact that no assessment has been conducted on the impact of the earlier policies.
93. ECRI recommends that the authorities carry out a comprehensive evaluation of the earlier integration policies on refugees and persons under subsidiary protection. On the basis of its findings, the authorities should ensure that the Action Plan for the integration of persons who have been granted international protection (2017-2019) has well-defined goals and targets, time-frames, funding, success indicators as well as a monitoring and evaluation system for its effective implementation.
94. Recognised refugees and beneficiaries of subsidiary protection are entitled to support as part of the state-funded integration programme. It covers standard social welfare payments for basic subsistence, an allowance for the rent of apartments for two years, health care, Croatian language training, the right to education, the right to free legal aid, the right to work, and assistance in finding employment. However, certain aspects give rise to concern.
95. Firstly, ECRI notes that the children of refugees and of beneficiaries of subsidiary protection, or unaccompanied children who have themselves been granted such status, can access primary and secondary schooling free of charge along the same lines as Croatian children. They are also entitled to Croatian language courses. Adults are equally eligible to have Croatian language courses, which are paid for by the State and last 200 hours.<sup>156</sup> Despite these provisions, various interlocutors insisted that access to Croatian language classes is a major problem. While these courses were carried out in six cities<sup>157</sup> in 2015 and 2016,

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<sup>155</sup> A total of 658 068 refugees and migrants transited the country during the refugee emergency response between September 2015 and March 2016. 70% of asylum seekers abscond the country afterwards.

<sup>156</sup> Programme for Learning Croatian Language, History and Culture for Asylees and Foreigners under Subsidiary Protection for the Purpose of their Integration in the Croatian Society was adopted in December 2014. The funds for attending these language courses are allocated in the State budget.

<sup>157</sup> In Zagreb, Velika Gorica, Kutina, Split, Pula, Poreč. 21 persons finished the language programme.

they stopped in February 2016 and some 94 beneficiaries of international protection await the reintroduction of classes. Considering that this situation also curtails the gainful employment and self-sufficiency of these people, ECRI urges the authorities to resume these classes in a consistent manner without any further delay.

96. ECRI recommends that the authorities take further measures for beneficiaries of international protection so as to be able to resolve their problems of language proficiency and acquisition of the basic skills needed to find employment.

97. Moreover, ECRI notes that there are procedural gaps in access to health care because beneficiaries of international protection are not recognised by the central database of the Croatian Health Insurance Office and medical doctors are not familiar with the registration modalities required. ECRI was informed by the authorities that a new database system is currently being developed to solve this issue.

98. ECRI recommends that the authorities set up a system for the registration of beneficiaries of international protection under the Croatian Health Insurance Office with a view to ensure their access to health care.

## **II. Topics specific to Croatia**

### **1. Interim follow-up recommendations of the fourth cycle**

99. With regard to the implementation of ECRI's first interim follow-up recommendation on increasing efforts to ensure appropriate initial and continuous training to judges, prosecutors, lawyers and police on applying the new Criminal Code provisions on combating racism, ECRI concluded that this recommendation had been partially implemented.<sup>158</sup> ECRI refers to § 57 of this report and in particular, its recommendation made under § 58.

100. Regarding its second and third interim follow-up recommendations, ECRI concluded that these recommendations had been implemented.<sup>159</sup> ECRI nevertheless refers to §§ 86-87 and §§ 94-98 of this report for recent developments.

### **2. Policies to combat discrimination and intolerance vis-à-vis LGBT<sup>160</sup>**

#### **- Data**

101. There is no official data on the size of the LGBT population in Croatia. ECRI, however, notes that there are measures in place to collect and analyse data on discrimination on grounds of sexual orientation and gender identity. In accordance with the Anti-discrimination Act, the Ministry of Justice created track records for judicial proceedings conducted with regard to discrimination grounds.<sup>161</sup> Various stakeholders such as the Ombudsperson, the Ombudsperson for Gender Equality and the Government Office for Human Rights also collect data on homo/transphobia. For instance, in 2016, a total of 2 757 cases were processed (an increase of 11.7% compared to 2015) by the Ombudsperson for Gender Equality. 32 out of 537 new cases (32.9% more than in 2015) were lodged for discrimination on these grounds.<sup>162</sup>

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<sup>158</sup> ECRI (2015).

<sup>159</sup> Ibid.

<sup>160</sup> For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

<sup>161</sup> Follow-up to Recommendation CM/Rec (2010)05, contribution by Croatia: 95.

<sup>162</sup> The Annual Report of the Ombudsperson for Gender Equality (2016): 8.

102. On the Rainbow Europe Map 2017 reflecting the European countries' legislation and policies guaranteeing LGBT human rights, Croatia ranks 11<sup>th</sup> over 49 countries scored, with an overall score of 62%.<sup>163</sup> Reports however indicate that social acceptance of LGBT people in Croatia is still rather low. 68% of the Croatian respondents<sup>164</sup> to the 2013 European Union LGBT Survey said that discrimination on grounds of sexual orientation is "very widespread" in their country, while the EU average is 31%. Moreover, 60% of the LGBT respondents stated that they had been personally discriminated against or harassed on grounds of their sexual orientation, the EU average being 47%. As a result, a great majority of LGBT persons in Croatia do not disclose their sexual orientation or gender identity, as confirmed by the same survey suggesting that only 15% of the participants were very open or fairly open about their LGBT background. According to the Eurobarometer 2015, 48% of the people surveyed in the country agreed with the statement that homosexual persons should have the same rights as heterosexual people (the EU average was 71%).<sup>165</sup>

- **Legislative issues**

103. ECRI welcomes that Croatia's non-discrimination and hate crime legislation explicitly includes sexual orientation and gender identity among the prohibited grounds (§ 2, 9). Article 87 (21) of the Criminal Code, for example, provides that homo/transphobic motivation as an aggravating circumstance (§ 3). ECRI notes that the Gender Equality Act<sup>166</sup> also prohibits direct and indirect discrimination on the basis of sexual orientation.

104. While the Family Act does not permit same-sex marriage<sup>167</sup>, ECRI is pleased to note the adoption of the law on registered same-sex partnerships<sup>168</sup> in July 2014.<sup>169</sup> The Law establishes that same-sex partners form a family and provides rights- *inter alia*- in the areas of health insurance, social benefits and inheritance, as already granted to married different-sex couples. In this connection, ECRI notes with interest the decision of the Zagreb Municipal Court, which for the first time, granted "partner-guardianship" for a second mother of a baby born into a lesbian partnership pursuant to this new legislation.<sup>170</sup> ECRI also underlines the recent judgment of the European Court of Human Rights, *Pajić v. Croatia*,<sup>171</sup> which held Croatia's former legal regime that had categorically denied same-sex couples the possibility of obtaining family reunification as discriminatory and welcomes the provisions in the new law remedying this situation.

105. The Croatian Personal Name Act contains an easy procedure for changing one's first name. Similarly, following the amendments in 2013 and 2014,<sup>172</sup> it is possible to change the gender marker in official documents. Such requests are made to the state administration offices upon obtaining the opinion of the National Health

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<sup>163</sup> <https://rainbow-europe.org/country-ranking>

<sup>164</sup> The EU LGBT Survey released by the European Union Agency for Fundamental Rights (FRA) on 17 May 2013, reported 1197 respondents from Croatia, of whom 49% were gay men, 20% lesbian women, 13% bisexual women, 9% bisexual men and 9% transgender persons.

<sup>165</sup> ILGA-Europe Annual Review (2016): 56.

<sup>166</sup> Article 6 (3).

<sup>167</sup> ECRI notes that in December 2013, a referendum was held on the constitutional definition of marriage. 66% of the voters voted in favor of a restrictive definition of marriage which is between women and men.

<sup>168</sup> Official Gazette of Croatia No. 92/14, 15 July 2014.

<sup>169</sup> According to information provided by the authorities, 185 same-sex partnerships were registered between August 2014 and March 2017.

<sup>170</sup> ILGA-Europe Annual Review (2016): 55. This decision was given in July 2015 under Article 44.

<sup>171</sup> ECtHR (2016). See also Resolution CM/ResDH(2017)387.

<sup>172</sup> Regulation on collecting medical records and determining the terms and conditions for sex change or life in a different gender identity was adopted.



Council. Surgery and hormonal therapy are not a requirement for legal recognition of the new gender. Various NGOs claimed that, in spite of the legislation, the authorities insist on the proof of gender reassignment surgery to proceed with the gender marker change. The Ombudsperson for Gender Equality criticised on several occasions<sup>173</sup> that the recognition process leaves applicants in limbo with its slowness, often taking much longer than the prescribed timelines.<sup>174</sup> In 2016, 24 people had their preferred gender legally recognised and 10 of them were still waiting for a reply.<sup>175</sup> ECRI encourages the authorities to ensure the legal recognition of a person's gender reassignment in a quick, transparent and accessible way.

106. Under the 2015 International and Temporary Protection Act, sexual orientation or gender identity fall within the notion of "membership in a particular social group" for asylum purposes. In 2014, the Ministry of Interior granted asylum for the first time to a homosexual man from Uganda who fled persecution.<sup>176</sup>

- **Promoting tolerance and combating discrimination**

107. The National Policy for Gender Equality (2011-2015), the National Plan for the Suppression of Discrimination (2008-2013) and the National Plan for the Protection and Promotion of Human Rights (2013-2016) included a range of measures to promote tolerance and combat discrimination against LGBT persons. ECRI regrets that all three plans have expired and it does not have any information about the details of the National Plan for Combating Discrimination (2017-2022) which was adopted on 1 December 2017.<sup>177</sup>

108. In the field of employment, discrimination based on sexual orientation and gender identity is, according to the Ombudsperson for Gender Equality, widespread. Due to fear of further stigmatisation and dismissal from work,<sup>178</sup> the number of complaints remained however low (only 2 in 2016). A recent research showed that 75% of the LGBT persons surveyed had experienced some form of discrimination, harassment and/or abuse and 61% of them had been exposed to homophobic comments. Among the participants who live in a registered partnership, 54.8% had not notified their employers about their status, even though they are entitled to certain rights, such as tax relief.<sup>179</sup>

109. As regards health, transgender persons have the same access to general health care services as all other individuals. While the Ministry of Health stated that there are state subsidies to cover the costs of treatment related to gender reassignment, it did not specify their scope. NGOs as well as the Ombudsperson for Gender Equality<sup>180</sup> report that the national health system lacks clear criteria as to the conditions and rate of costs covered by state. ECRI was also informed that Croatian hospitals do not perform the relevant medical operations.

110. ECRI recommends that the authorities make gender reassignment treatment available to transgender persons and clear guidelines are developed on the reimbursement of costs by public health-insurance schemes.

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<sup>173</sup> The Ombudsperson for Gender Equality (2016), *op.cit.* 171-173.

<sup>174</sup> ILGA-Europe Annual Review (2017): 68.

<sup>175</sup> The Ombudsperson for Gender Equality (2016), *op.cit.* 171.

<sup>176</sup> Vijesti (2014).

<sup>177</sup> NGOs stated that the Working Group who drafted the final version of this Plan have taken out many measures related to vulnerable groups, including LGBT persons, that had existed in earlier drafts.

<sup>178</sup> The Ombudsperson for Gender Equality (2016), *op.cit.* 165.

<sup>179</sup> Results of the project on "LGBTI Workplace Equality" (2017): 27-28.

<sup>180</sup> The Ombudsperson for Gender Equality (2016), *op.cit.* 172-173.

111. As for education, ECRI is pleased to note that the national curriculum contains a health education module that covers sexual equality and the prevention of violent behaviour.<sup>181</sup> NGOs, however, claimed that there is still a considerable level of bullying and harassment against LGBT persons in school environments. In 2014, following numerous complaints, the authorities undertook a review of some textbooks featuring homophobic content and covering homosexuality only in the context of HIV/AIDS education. ECRI commends these efforts, particularly in light of a recent survey,<sup>182</sup> the results of which revealed that half of high school students regard homosexuality as a disease. (ECRI also refers to its recommendation in § 44).
112. ECRI considers that the promotion of LGBT rights in Croatia has improved significantly, particularly during the accession to the EU. However, NGOs indicate that there is currently a negative trend hindering further progress in the area. ECRI observes this recent trend with concern, particularly in the absence of any strategy or action plan. In this respect, ECRI notes with regret the last decision of the Ministry of Culture on cutting the funding of the Zagreb Pride, an event which has a symbolic importance for diversity in society, despite its continuous support to the event ever since its inception. In view of this, ECRI considers that the authorities should take further measures to promote tolerance towards LGBT persons in different areas, as well as to combat homophobia and transphobia.
113. ECRI recommends that the authorities draw up and adopt an action plan, either as a separate policy document or part of the National Plan for Combating Discrimination (2017-2022), to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care.

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<sup>181</sup> Health Education Curriculum for Primary and Secondary Schools adopted in 2013. Sexuality education is however limited to only two hours per year. See UN Special Rapporteur (2017): 76.

<sup>182</sup> Institute for Social Research (2013).

## INTERIM FOLLOW-UP RECOMMENDATIONS

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

- ECRI recommends that the authorities introduce compulsory human rights education as part of civic education into all school curricula, especially as regards the right to equality and the prohibition of discrimination. Appropriate text books should be developed and teachers should continue receiving the necessary training in these subjects.
- ECRI recommends that the authorities ensure that the National Roma Inclusion Strategy (2013-2020) is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive equality data. The strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with regional and local authorities as well as members of the Roma community and adequate funding should be allocated for the strategy to be effective.

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



## LIST OF RECOMMENDATIONS

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

1. (§ 7) ECRI recommends that the authorities bring the Criminal Code into line with its General Policy Recommendation (GPR) No. 7 as indicated in the preceding paragraphs; in particular they should (i) include in all criminal law provisions aimed at combating racism and intolerance the ground of citizenship; (ii) criminalise incitement to discrimination; (iii) 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; and (iv) criminalise the production and storage of written, pictorial or other material containing racist manifestations.
2. (§ 15) ECRI recommends that the authorities amend the anti-discrimination legislation to remedy the gaps identified above in line with its General Policy Recommendation (GPR) No. 7, in particular, they should i) introduce a legal provision placing public authorities under a duty to promote equality in carrying out their functions; ii) include the express duty to ensure that those parties to whom public authorities award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination; iii) provide for the obligation to suppress public financing of organisations or political parties which promote racism; and iv) ensure that NGOs and other bodies that have a legitimate interest in combating racism and racial discrimination can bring civil cases concerning an individual person.
3. (§ 18) ECRI recommends that the Ombudsperson is granted the right to bring civil cases concerning an individual person.
4. (§ 20) ECRI recommends that the authorities amend the legislation so that the reports of the Ombudsperson and specialised ombudspersons are not voted on as well as the legislation concerning the dismissal of the specialised ombudspersons upon rejection of their annual reports by the Parliament to fully ensure their independence.
5. (§ 23) ECRI recommends that the authorities further refine their national data collection system for hate speech incidents, by revising the way data are collected on the criminal offence of incitement to violence and hatred as well as on the application of provisions related to misdemeanours.
6. (§ 40) ECRI recommends that (i) the authorities ensure full independence of the Agency for Electronic Media and refrain from any political pressure on this body, (ii) and encourages the Agency for Electronic Media to take firm action in all cases of hate speech and impose appropriate fines to punish, as well as to act as a deterrent against the dissemination of racist and intolerant expressions.
7. (§ 42) ECRI recommends that, without interfering with the independence of the media, the authorities encourage the latter to ensure better compliance with ethical standards and to facilitate training to this effect. ECRI also recommends that the authorities initiate an awareness-raising campaign jointly with the media regulatory and self-regulatory bodies as well as civil society on preventing and combating hate speech.
8. (§ 44) ECRI recommends that the authorities introduce compulsory human rights education as part of civic education into all school curricula, especially as regards the right to equality and the prohibition of discrimination. Appropriate text books should be developed and teachers should continue receiving the necessary training in these subjects.
9. (§ 46) ECRI recommends that the authorities should condemn hate speech and promote counter-speech by politicians and high-ranking officials. All political

parties in the country should also condemn hate speech and call on their members and followers to abstain from using it.

10. (§ 58) ECRI recommends that the training activities for law enforcement officials and the judiciary on hate crime are scaled up. Such training should cover racist and homo-/transphobic hate crime as well as ethnic profiling. ECRI also recommends that the authorities carry out an impact assessment to evaluate the training to establish to what extent it helps hate crime to be identified effectively and, if necessary, adjust it.
11. (§ 61) ECRI recommends that a racist and/or homo-/transphobic motivation in cases of violent incidents is made an integral part of investigations, particularly through providing clear guidelines between the police and State Attorney's Office, as well as judicial proceedings from their very beginning. ECRI also recommends that the authorities continue training to police, judges and prosecutors on the application of Article 87 (21) of the Criminal Code.
12. (§ 70) ECRI recommends that the authorities ensure that the National Roma Inclusion Strategy (2013-2020) is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive equality data. The strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with regional and local authorities as well as members of the Roma community and adequate funding should be allocated for the strategy to be effective.
13. (§ 75) ECRI recommends that the authorities evaluate the inclusion of Roma children in the existing pre-school programmes with a view to increasing their participation. They should also evaluate whether these programmes provide equal access to education and quality teaching.
14. (§ 77) ECRI recommends that the authorities establish an effective monitoring mechanism for drop-outs at primary and secondary school level to ensure Roma children's attendance and decrease the risk of dropping out.
15. (§ 82) ECRI recommends that the authorities increase the number of Roma who work in the civil service through effective implementation of the positive action measures available in the legal framework.
16. (§ 87) ECRI recommends that the authorities increase the budget for primary legal aid and put in place efficient mechanisms to ensure timely disbursement of funds. Primary legal aid providers should also be able to cover administrative fees for beneficiaries.
17. (§ 93) ECRI recommends that the authorities carry out a comprehensive evaluation of the earlier integration policies on refugees and persons under subsidiary protection. On the basis of its findings, the authorities should ensure that the Action Plan for the integration of persons who have been granted international protection (2017-2019) has well-defined goals and targets, time-frames, funding, success indicators as well as a monitoring and evaluation system for its effective implementation.
18. (§ 96) ECRI recommends that the authorities take further measures for beneficiaries of international protection so as to be able to resolve their problems of language proficiency and acquisition of the basic skills needed to find employment.
19. (§ 98) ECRI recommends that the authorities set up a system for the registration of beneficiaries of international protection under the Croatian Health Insurance Office with a view to ensure their access to health care.

20. (§ 110) ECRI recommends that the authorities make gender reassignment treatment available to transgender persons and clear guidelines are developed on the reimbursement of costs by public health-insurance schemes.
21. (§ 113) ECRI recommends that the authorities draw up and adopt an action plan, either as a separate policy document or part of the National Plan for Combating Discrimination (2017-2022), to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care.





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