

# **ECRI REPORT ON THE RUSSIAN FEDERATION**

**(fifth monitoring cycle)**

Adopted on 4 December 2018

Published on 5 March 2019

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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, racial discrimination, 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 22 June 2018; 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 the Russian Federation on 20 June 2013, progress has been made in a number of fields.**

Legislation on regional ombudspersons has been enacted and regional ombudspersons have been appointed in all constituent entities of the Russian Federation. The Federal Agency for Nationality Affairs<sup>1</sup> was set up in 2015; it monitors the status of inter-ethnic and inter-religious relations and early prevention of conflict situations.

The number of racist murders has declined in recent years and violent crime in general has decreased. Neo-Nazi attacks in particular have fallen dramatically and the main organised radical groups are now in decline. Police have been trained in identifying hate crime, as well as in aspects of religious and cultural tolerance, and prosecutors specialising in crimes of extremism are re-trained every three years.

A national Roma Action Plan for the period 2013-2014 was adopted and a new one for the years 2018-2020 has also been adopted.

The State Migration Policy 2012-2025 includes references to the integration of recognised refugees and beneficiaries of temporary asylum. Access to health-care, education and employment is granted on the same basis as for Russian nationals. Immediate and large-scale assistance was provided to the high number of people fleeing the armed conflict in Eastern Ukraine<sup>2</sup> since 2014; integration support included housing and vocational training courses.

The Sakharovo Migration Centre outside Moscow was established as a "one-stop shop" for migrants benefitting from the visa-free entry regime to obtain patents allowing them to seek employment and affording them better protection. The centre is said to have contributed to reducing irregular migration and illegal employment.

In February 2018 a new Ministry of Health regulation for issuing certificates of gender reassignment entered into force, providing a clearer and more accessible procedure for changing one's gender marker.

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

No steps have been taken to adopt comprehensive civil and administrative legislation against discrimination; the current provisions remain sector based and spread across various laws.

Significant amounts of racist and homo/transphobic hate speech are expressed by politicians and religious leaders. Anti-LGBT<sup>3</sup> rhetoric has become one of the most common forms of hate speech reflected in expressions declaring homosexuality a disease or a crime, and resulting in stigma and intolerance against the LGBT community inevitably taking root in public attitudes. Anti-Muslim hate speech is manifested in the association of Islam with terrorism or rallies and petitions opposing the construction of mosques. The level of intolerance towards Ukrainians has increased significantly since 2014 as a result of the illegal annexation by the Russian

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<sup>1</sup> The agency's name has been translated as "Federal Agency for Ethnic Affairs", or "Federal Agency for Nationalities Affairs", but the Russian authorities informed ECRI that the official translation is now "Federal Agency for Nationality Affairs".

<sup>2</sup> All references to "armed conflict in Eastern Ukraine" in this report pertain to the ongoing armed conflict in certain areas of the Donetsk and Luhansk regions (see also Council of Europe Committee of Ministers CM/Del/Dec(2016)1254 and ECRI's fifth report on Ukraine).

<sup>3</sup> Prior to ECRI's visit to the Russian Federation in February 2018, the country's authorities informed ECRI's Secretariat that they do not recognise ECRI's competence in the field of protection and promotion of LGBT rights. ECRI took note of this view, but nevertheless includes the topic of LGBT-related discrimination in this report as it has done for all other member States during its fifth monitoring cycle (see also §106).

Federation of the Autonomous Republic of Crimea and the city of Sevastopol and Russian military interference leading to armed conflict in Eastern Ukraine. Intolerant public discourse remains unchallenged and unpunished.

The over-use and misuse of the anti-extremism legislation continues to be of concern. The Federal List of Extremist Materials now contains some 4,200 items. The number of prosecutions for extremist activity is extremely high and increasing every year and only 0.4% of cases end in acquittal. The procedure for blocking access to websites, sometimes without a court order, may be used to filter or censor the Internet, restrict access to organisations considered undesirable and stifle dissent.

The most frequent victims of racist violence are Central Asians and others of non-Slav appearance, Roma and Black people. In April 2017, reports emerged that over 100 men, perceived to be gay, had been arrested and detained in the autonomous republic of Chechnya. Victims were allegedly mistreated, tortured and forced to disclose the identity of other LGBT persons.

No in-depth evaluation of the Roma Action Plan (2013-2014) and its implementation was carried out and there are serious shortcomings in terms of overall results. Racial profiling has not been defined and prohibited by law. This practice by the police continues to be widespread, manifested in arbitrary identity checks and unnecessary arrests, targeting in particular migrants from Central Asia and the Caucasus, as well as Roma.

On 20 April 2017, the Supreme Court declared the Jehovah's Witnesses Administrative Centre in the Russian Federation an extremist organisation and ordered its liquidation together with all 395 local organisations of Jehovah's Witnesses, as well as confiscation of their property.

The Law on Non-Commercial Organisations (Foreign Agents law) and its heavy-handed application undermine civil activism and those defending vulnerable groups. In 2013 a number of legislative amendments introduced a prohibition on providing information to minors promoting so-called non-traditional sexual relationships. The ambiguity of these provisions and potential broad reach has had a chilling effect on groups working with and for LGBT persons. No form of same-sex partnership is recognised in the Russian Federation.

**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.**

All existing legislation should be amended to include explicitly the grounds of sexual orientation and gender identity in the list of protected grounds, in particular in Articles 282, 136 and 63 of the Criminal Code, as well as in Article 3 of the Labour Code and Article 5 of the Law on the Fundamentals of Health Care of Citizens in the Russian Federation. An independent equality body specialised in combating racism and intolerance should be established.

As a matter of priority, the Russian authorities should abolish the legal ban on the provision of information about homosexuality to minors (legislation on the so-called "promotion of non-traditional sexual relations among minors"), in line with the judgment of the European Court of Human Rights in the case *Bayev and others v. Russia*.<sup>\*</sup>

The anti-extremism legislation and its application should be revised. The authorities should ensure that the various responses to offences of extremism, including hate speech, are not used to suppress legitimate criticism of official policies, political opposition or religious beliefs.

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<sup>\*</sup> 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.

Cooperation between LGBT communities and the police should be facilitated and regular dialogue established with a view to improving reporting and preventing and combating homo/transphobic violence.

A body independent of the police and prosecution authorities competent to investigate all complaints against the police should be set up.\*

The authorities should carry out an evaluation of the impact of their Roma-related activities, in particular the national Action Plans for Roma, with a view to ensuring concrete actions and progress on an appropriate and sufficiently large scale. They should ensure that Roma children are always fully integrated into regular educational establishments and that no separate “Roma classes” are set up. The integration of refugees and beneficiaries of temporary asylum should be strengthened.

The Law on Non-Commercial Organisations should be amended, including to abandon the term “foreign agent”, to remove the power to register organisations without their consent, and to apply legal sanctions only in case of serious wrongdoing.

The authorities should reconsider their position and take steps to reverse the ban on Jehovah’s Witnesses, as well as abandon all related measures involving their children.

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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<sup>4</sup>

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

1. The Russian Federation has still not ratified Protocol No. 12, which it signed on 4 November 2000. ECRI considers this instrument, which provides for a general prohibition of discrimination, to be an essential tool in the fight against racism and racial discrimination.

2. ECRI reiterates its recommendation that the Russian Federation ratifies Protocol No. 12 to the European Convention on Human Rights.

##### - Existence of legislation as per ECRI's General Policy Recommendation (GPR) No. 7<sup>5</sup>

##### - Criminal law

3. The following analysis focuses mainly on the lacunae in the criminal law of the Russian Federation as compared with ECRI's GPR No. 7 on legislation to combat racism and racial discrimination.

4. Article 282, paragraph 1, of the Criminal Code punishes public incitement to hatred or enmity, as well as abasement of human dignity, against a person or group of persons on grounds of sex, race, nationality (meaning national or ethnic origin), language, origin, religion, and affiliation to any social group. Punishments include fines, compulsory labour, and imprisonment for up to two years. As compared to ECRI's GPR No. 7 §18a, the offences of incitement to violence and to discrimination are missing. Moreover, the list of grounds lacks reference to colour and citizenship. Paragraph 2 of the article punishes more severely the same acts committed with the use or threat of violence, by a person in his/her official position, or by an organised group. However, the Criminal Code contains no reference to public insults contrary to GPR No. 7 §18b, and while defamation is an offence under Article 128, no grounds are mentioned.

5. Article 354.1 of the Criminal Code criminalises, among others, the public denial of facts established by the verdicts of the Nuremberg War Crimes Tribunal and approval of such crimes, as well as dissemination of false information on the acts of the USSR during the Second World War. The elements of trivialisation and justification of these crimes are lacking, as per GPR No. 7 §18e. ECRI also has reservations concerning the restriction of these provisions to World War II and related events, whereas its GPR is more general, referring to crimes of genocide, crimes against humanity or war crimes.

6. As concerns aggravating circumstances (GPR No. 7 §21), ECRI notes that certain criminal offences, such as murder and various forms of bodily injury,<sup>6</sup> provide specifically for heavier penalties when motivated by political, ideological, racial, national or religious hatred or hatred in respect of a social group. In addition, Article 63 of the Criminal Code provides for higher punishments for any other offence motivated by the same grounds. The authorities consider that the elements of language and citizenship are covered in these provisions, but ECRI

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<sup>4</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. "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>5</sup> For legislation relating to sexual orientation and gender identity, see the section on policies to combat discrimination and intolerance vis-à-vis LGBT.

<sup>6</sup> For more details see §15 of ECRI's fourth report.

always advocates their specific inclusion in the list of grounds in order to avoid any legal uncertainty.

7. Finally, the Criminal Code does not provide for criminal liability for legal persons for offences relating to racism and racial discrimination, contrary to GPR No. 7 §22.<sup>7</sup>
8. ECRI recommends that the following offences are added to the Criminal Code: public incitement to violence and to discrimination; racist public insults; trivialisation and justification, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; racial discrimination in the exercise of one's (private) occupation; and criminal liability for legal persons. In addition, the authorities should ensure that the grounds of colour, language and citizenship are included in all the relevant articles of the Criminal Code.

- **Civil and administrative law**

9. In its fourth report, ECRI strongly recommended the adoption of comprehensive civil and administrative legislation against discrimination, including racial discrimination, drawing inspiration from its GPR No. 7. ECRI regrets that no steps have been taken in this direction and that provisions against discrimination remain sector based and spread across various laws, such as the Labour Code and the Law on the Fundamentals of Health Care. As noted in its fourth report, this contributes to the widespread lack of understanding of what constitutes discrimination and the importance of non-discrimination as a fundamental human right.

10. ECRI strongly reiterates its recommendation that comprehensive anti-discrimination legislation should be enacted setting out a clear prohibition of direct and indirect discrimination in all areas of life and on all grounds, in line with its General Policy Recommendation No. 7.

- **Equality bodies<sup>8</sup>**

11. In its fourth report, ECRI reiterated its recommendation to set up an independent body specialised in combating racism and racial discrimination (equality body). It notes that in April 2015 the Federal Agency for Nationality Affairs<sup>9</sup> was created (see also the section below on integration). Although this body has a mandate to combat racism and racial discrimination and can consider complaints submitted to it regarding both public and private matters, it is not an independent authority and lacks many of the functions set out in ECRI's revised GPR No. 2, notably to support people exposed to discrimination or intolerance and to pursue litigation on their behalf.<sup>10</sup>
12. The High Commissioner for Human Rights (Ombudsperson) remains the only relevant independent authority in the Russian Federation. However, it is a typical Ombudsperson with competence only in the public but not the private sector and has no specific mandate to combat racism, racial discrimination, xenophobia, antisemitism and intolerance. ECRI was informed that the High Commissioner has received only around 200 complaints related to discrimination in the last five years (27 in 2017).

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<sup>7</sup> In Russian legal doctrine, only physical persons can be perpetrators of crime.

<sup>8</sup> The term "national specialised bodies" was updated to "equality bodies" in the revised version of GPR No. 2 which was published on 27 February 2018.

<sup>9</sup> The agency's name has been translated as "Federal Agency for Ethnic Affairs", or "Federal Agency for Nationalities Affairs", but the Russian authorities informed ECRI that the official translation is now "Federal Agency for Nationality Affairs".

<sup>10</sup> See GPR No. 2, §§10, 13 and 14.

13. ECRI strongly recommends again that an independent equality body specialised in combating racism and intolerance is established, as set out in ECRI's revised General Policy Recommendation No. 2.

14. In its fourth report, ECRI recommended harmonising the powers, functions and activities of regional ombudspersons to ensure consistency throughout the country and the establishment of regional ombudspersons in those constituent entities which did not yet have them. ECRI is pleased to note that legislation on regional ombudspersons has been enacted and since 2016 regional ombudspersons have been appointed in all constituent entities of the Russian Federation. It particularly welcomes the positive evaluation given by many civil society groups regarding the engaged and progressive work of the Regional Ombudsman of Saint Petersburg, including with respect to LGBT rights.

## 2. Hate speech<sup>11</sup>

15. The main provision punishing incitement to hatred is Article 282 of the Criminal Code. In addition, Article 280 punishes public appeals to perform extremist activity. These articles, along with a number of others,<sup>12</sup> fall under the section of the Criminal Code entitled "crimes against State power" and deal with so-called offences of extremism. The Federal Law on Combating Extremist Activity of 2002 presents a list of conduct defined as extremist, including incitement of social, racial, ethnic or religious hatred. The Code of Administrative Offences prohibits the production and distribution of materials which have been declared extremist. ECRI notes, therefore, that the Russian authorities have established a special legal order relating to "extremism", under which hate speech falls.

16. Sexual orientation and gender identity are not explicitly mentioned as protected grounds in any of the provisions on hate speech (see recommendation in §111).

### - Data

17. In its fourth report, ECRI recommended setting up an effective system to monitor the situation concerning all offences motivated by racial hatred. The Russian Federation did not report hate crime data to OSCE-ODIHR between 2008 and 2015. Data reported in 2016 indicated 1 450 extremist offences recorded by the police with no breakdown by bias motivation or type of crime. Data is collected by the Investigative Committee<sup>13</sup> which was granted exclusive competence to investigate offences of an extremist nature. Statistics gathered by the Investigative Committee are forwarded to the Office of the General Prosecutor which collates and publishes them. According to data provided by the authorities, there were 1 521 offences of an extremist nature registered in 2017. Of these, according to State statistical reporting, 985 concerned Article 282 of the Criminal Code and 310 were registered under Article 280. 1 051 cases involved use of the Internet. Thus the vast majority of extremist crime involves some form of public incitement to hatred. However, the data is not broken down further into the different hate motives, which could provide useful information. Moreover, since aggravating circumstances under Article 63 of the Criminal Code are seldom

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<sup>11</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>12</sup> Article 282.1 on organising an extremist community, and 282.2 on organising the activities of an extremist community.

<sup>13</sup> The Investigative Committee is the main federal investigating authority in Russia, answerable to the President. It also has statutory responsibility for inspecting the police forces, combating police corruption and police misconduct and is responsible for conducting investigations into local authorities and federal governmental bodies.

invoked, possibly due to the fact that many offences against the person have in-built aggravated penalties (see §6), ECRI has found no data on its application.

18. ECRI recommends that the authorities break down further the data on incidents relating to Article 282 into the different hate motives. They should also collect and publish data on the application of Article 63 of the Criminal Code.

19. The authorities informed ECRI that the number of extremist cases is rising every year. In 2017 there was a 4.9% increase compared to 2016. In 2015, there were around 500 cases of extremism referred to the Investigative Committee.

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

20. Reports indicate significant amounts of racist hate speech expressed by public officials and politicians, especially during election campaigns.<sup>14</sup> The main targets are migrants from the Caucasus and Central Asia, Muslims and Ukrainians. Similarly, homo/transphobic hate speech features regularly in the discourse of public figures, politicians and religious leaders.

21. As concerns anti-LGBT rhetoric, ECRI notes that this has become one of the most common forms of hate speech. It is often manifested in expressions declaring homosexuality a disease, a sin or a crime.<sup>15</sup> For example, the owner of a Moscow grocery chain made homophobia a central ideological tenet of his shops and put up signs announcing that “faggots will not be served” or “sodomites not allowed”.<sup>16</sup>

22. Particularly worrying is the fact that homophobic sentiment is being actively fuelled by the President of the Russian Federation and the Russian Orthodox Church. In June 2017, President Putin, in a prominent interview with writer and film-maker Oliver Stone, explained that his anti-LGBT policies (see the section on discrimination and intolerance vis-à-vis LGBT) stemmed from his duty as head of State to uphold traditional family values since same-sex relationships do not produce children.<sup>17</sup> The Patriarch of the Russian Orthodox Church, who is a key supporter of anti-LGBT laws and policies, has a history of virulent anti-LGBT rhetoric, speaking out against same-sex marriage as a “very dangerous apocalyptic symptom”.<sup>18</sup> As a result, stigma and intolerance against the LGBT community have inevitably taken root in public attitudes and LGBT people are reported to live in a “state of perpetual worry” or “anxiety bordering on fear”<sup>19</sup> (see also §41).

23. In addition, ECRI is concerned to learn about a video disseminated on YouTube shortly before the April 2018 elections warning Russians that if they did not vote in the presidential elections they risked seeing their country transformed into a gay-friendly State. It is not clear who made the video, but reports indicate that it is widely believed to be Government produced.<sup>20</sup> ECRI is not aware of any government official condemning the video.

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<sup>14</sup> See, for example, UN CERD 2017.

<sup>15</sup> Open Democracy 2017.

<sup>16</sup> Radio Free Europe Radio Liberty 2017.

<sup>17</sup> Pink News 2017a.

<sup>18</sup> Pink News 2017b.

<sup>19</sup> Pulitzer Center 2015.

<sup>20</sup> The Guardian 2018a; Independent Online 2018.



24. Anti-Muslim hate speech continues to be expressed in public discourse. It is manifested in the association of Islam with terrorism<sup>21</sup> or rallies and petitions opposing the construction of mosques in various regions of Russia.<sup>22</sup> ECRI is concerned that building projects have been put on hold or refused by local authorities as a result of such protests, for example in Kaliningrad and Ulyanovsk.<sup>23</sup>
25. On the other hand, Jewish groups informed ECRI that manifestations of antisemitism have declined in recent years. However, while there is an overall absence of traditional antisemitism, isolated incidents still occur. For example, in January 2017 the Deputy Speaker of the Duma made comments which appeared to blame Jews for destroying cathedrals; these generated no reaction, neither support nor condemnation.<sup>24</sup>
26. The level of intolerance towards Ukrainians has increased significantly since 2014 as a result of the illegal annexation by the Russian Federation of the Autonomous Republic of Crimea and the city of Sevastopol and Russian military interference leading to armed conflict in Eastern Ukraine.<sup>25</sup> This is mostly of a political nature, depicting Ukrainians as enemies of Russia.<sup>26</sup>

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

27. There is reported to be a significant amount of hate speech in traditional media and on the Internet, in particular social media. As concerns traditional media, ECRI notes that the Government or pro-government individuals own approximately 66% of the 2 500 television stations, including all six national channels. Similarly, the Government or state-controlled companies directly own more than 60% of the country's 45 000 registered local newspapers and periodicals.<sup>27</sup>
28. Anti-LGBT expressions are very common in the media. It is widely reported that pro-government media paint an image of Russia as a safe haven for traditional values. Messages disseminated include that being gay is a mental disease, and same-sex marriage is akin to marrying your dog.<sup>28</sup> In a documentary broadcast on 2 March 2017 on the private channel REN-TV, the commentator stated that "in the West, they fight for the right to call sick and perverse people healthy".<sup>29</sup>
29. According to reports, some media continue to disseminate negative stereotypes and prejudices against ethnic minority groups, including the Roma.<sup>30</sup> Another television documentary of concern to ECRI is the "Burden of Gypsies", broadcast on 21 March 2016 on the national channel Rossiya-1, which portrayed negative stereotypes of Roma and spread misconceptions. The film downplayed the achievements of well-known Russian and foreign Roma and focused on criminality and drug dealing.<sup>31</sup> However, a review of the documentary by

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<sup>21</sup> Bekkin 2017.

<sup>22</sup> Bekkin 2017.

<sup>23</sup> Bekkin 2017.

<sup>24</sup> Newsweek 2017.

<sup>25</sup> All references to "armed conflict in Eastern Ukraine" in this report pertain to the ongoing armed conflict in certain areas of the Donetsk and Luhansk regions (see also Council of Europe Committee of Ministers CM/Del/Dec(2016)1254 and ECRI's fifth report on Ukraine).

<sup>26</sup> ADC Memorial 2017.

<sup>27</sup> US Department of State, Bureau of Democracy, Human Rights and Labor 2016.

<sup>28</sup> EU v Disinfo 2017.

<sup>29</sup> EU v Disinfo 2017.

<sup>30</sup> UN CERD 2017.

<sup>31</sup> Roma Times 2016.

Roskomnadzor<sup>32</sup> did not find any violation of the Federal Law on Combating Extremist Activity. An enquiry initiated by the Moscow Anti-Extremist Centre of the Directorate of Internal Affairs is pending.

30. As concerns the Internet, ECRI notes that a large amount of hate speech can be found on the Russian social networking site VKontakte (similar to Facebook). The authorities informed ECRI that since VKontakte is used on a daily basis by more than 460 million people, most of the online extremist offences are committed on this site. It seems that Muslims as a religious group are a constant target of ultra-right hate on VKontakte.<sup>33</sup>

- **Hate speech in football**

31. ECRI notes that abusive speech is widespread in Russian football. It is expressed in racist insults, aggressively nationalistic, antisemitic and homophobic chanting and offensive gestures. Most targeted are Black players of opposing teams. For example, in March 2018, monkey chants were addressed to French players by Russia fans during a pre-World Cup friendly between the two countries.<sup>34</sup> Administrative proceedings were initiated but discontinued due to lack of evidence.

- **The authorities' response**

32. 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 psychologically 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.
33. As concerns criminal law enforcement, ECRI was informed by the authorities that in 2017, there were 1 109 prosecutions for extremist activity and 755 persons were sentenced (66 of whom were minors). ECRI commends the Russian authorities' tough approach to cracking down on extremism, as noted already in its fourth report. According to the SOVA Center for Information and Analysis (a Russian NGO which monitors the application of the anti-extremism legislation), the majority of hate speech subject to criminal sanctions consists of virulent racist or Jihadist propaganda and other forms of hostility and intolerance warranting forceful action. ECRI notes also that the number of people sentenced to actual deprivation of liberty for extremist offences, including hate speech, has increased.<sup>35</sup> However, it refers to the section below (§§44-52) in which it expresses alarm at the over-use and misuse of the anti-extremism legislation.
34. In its fourth report, ECRI strongly encouraged the authorities to continue their efforts to prevent the Internet from being used to disseminate racist and xenophobic comments and material. The main legislation in this context is Federal Law No. 149-FZ of 27 July 2006 on Information, Information Technologies and Information Security. Pursuant to its Article 15.1, the blocking of access to websites containing material prohibited by law, including content declared extremist by a court, is implemented by the media regulator, the Federal

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<sup>32</sup> Roskomnadzor (Federal Service for Supervision of Communications, Information Technology and Mass Media) was established in 2008 as a federal executive body having control and supervision of mass media (including electronic mass media), mass communications, information technology and telecommunications; supervision and statutory compliance control of personal data processing; and administration of the Radio Frequency Service activities. It is affiliated to the Ministry of Communications and Mass Media and has branches in all entities of the Russian Federation.

<sup>33</sup> SOVA 2018.

<sup>34</sup> The Guardian 2018b. The Russian Football Union was subsequently fined by FIFA for the racist chants by fans.

<sup>35</sup> SOVA et al. 2017.

Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor<sup>36</sup>) in the framework of a single automated information system called the single (or uniform) register<sup>37</sup> of domain names, Internet website references and network addresses that enable identification of websites containing information prohibited for distribution throughout the country.<sup>38</sup> The single register contains more than 70 000 entries and continues to grow. The authorities informed ECRI that over 37 000 extremist materials have been blocked or deleted from the Internet; these include websites of certain Islamic groups and Jehovah's Witnesses (see also §§46, 49 and 101). In addition, under Article 15.3 of the same law, the Prosecutor General can order Roskomnadzor to restrict access to websites inciting extremist activity (among others) but without a court order. The authorities informed ECRI that this blocking mechanism is highly effective and that in the first half of 2018 alone, more than 2 400 information resources were blocked and illegal information was deleted from over 23 000 sites, including the VKontakte pages of the Tatar-haters Community as well as sites of numerous terrorist organisations.

35. In its fourth report, ECRI reiterated its recommendation that the Russian Federation signs and ratifies the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. ECRI regrets that these instruments have still not been signed or ratified<sup>39</sup> and, in view of the worrying amounts of racially-motivated hate content on the Internet, again encourages the authorities to do so.
36. ECRI notes that the Federal Agency for Nationality Affairs (see also §11) has created a system for monitoring the status of inter-ethnic and inter-religious relations and early prevention of conflict situations. It does this by monitoring threats on the Internet and in social media and by predicting conflicts at the earliest stages, enabling the authorities at federal, regional and local levels to take steps to prevent their further escalation. However, it does not publish its findings or indeed any information about its mandate or how it functions. While most civil society organisations were aware of the creation of the agency, none knew anything about its actual work.
37. ECRI recommends that a dedicated website for the Federal Agency for Nationality Affairs is established and information about its mandate and activities published. This website could also include a tool for reporting hate crime, including hate speech.
38. As concerns self-regulation in the media, the Code of Professional Ethics of Journalists, adopted by the Congress of Journalists of Russia in 1994, sets out a number of rights and obligations.<sup>40</sup> Article 5 states that in performing their professional duties journalists should inter alia counteract extremism on any ground, such as gender, race, language, religion, political or other opinions, social and national origins; respect the honour and dignity of people who become the objects of their professional attention; and refrain from any derogatory allusions or comments in relation to race, nationality, skin colour, religion, social origin, sex or handicap. The code does not contain any provisions on sanctions for violations.

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<sup>36</sup> See footnote 32.

<sup>37</sup> 2ip.io, Blocking by Roskomnadzor.

<sup>38</sup> Owners of websites have the right to challenge access restrictions in court.

<sup>39</sup> The authorities stated that they consider in particular Article 32b of the Convention on Cybercrime a direct violation of State sovereignty and therefore unacceptable (the article provides that a Party may, without the authorisation of another Party, access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system).

<sup>40</sup> Thomson Reuters Foundation 2016.

39. With regard to members of Parliament (MPs), they are under a statutory obligation to abide by a code of ethics (Article 9 of the Law on the Status of MPs). However, there is no formalised code in place and standards of conduct are found in the State Duma Regulations and the Federation Council Regulations. In particular, MPs must refrain from using gross or abusive language prejudicial to the honour and dignity of fellow MPs and other persons. In case of breach, penalties include withdrawal of the right to speak for varying lengths of time up to a maximum of one month. The Ethics Commission of the State Duma informed ECRI that in the past year it had imposed penalties in 48 cases. Both chambers are currently developing a code of conduct, but appear to have been doing so for the last 15 years.<sup>41</sup>

40. ECRI recommends the adoption of a code of ethics for both chambers of the Russian Parliament, prohibiting and sanctioning racist and homo/transphobic hate speech.

41. ECRI places great importance on tackling hate speech through confronting and condemning it directly by counter speech that clearly shows its destructive and unacceptable character. Public figures can make an especially important contribution because the esteem in which they are held gives their voice a considerable influence over others. Reports indicate that hate speech expressed by opinion leaders, politicians and religious leaders, which contributes to public discourse that is increasingly offensive and intolerant, remains not only unpunished,<sup>42</sup> but also unchallenged (see for example §25). Moreover, attempts by public figures to justify the existence of prejudice and intolerance regarding particular groups (notably LGBT) only tends to perpetuate and increase hostility towards them (see §22). ECRI has only come across one example of counter speech: as regards the homophobic YouTube video (see §23), one of the rival candidates condemned it as incitement to hatred against the LGBT community.<sup>43</sup> In this context, ECRI also commends the positive and constructive attitude taken by the Regional Ombudsman of Saint Petersburg who is reported by civil society to have made unusual efforts to establish dialogue between the police and LGBT persons and to provide protection for their events.

42. ECRI recommends that the authorities encourage speedy reactions by public figures, and in particular politicians and religious leaders, to hate speech that not only condemn it but which also seek to reinforce the values that it threatens.

43. Finally, as concerns football, ECRI welcomes the steps taken in view of the FIFA World Cup in the Russian Federation in summer 2018. The post of Inspector for combating racism was restored in February 2017. ECRI was informed that the Russian Football Union has established a monitoring system for matches, with observers sent to high risk games to identify misbehaving fans and hold their clubs responsible for their actions. For further guidance, ECRI refers to its GPR No. 12 on combating racism and racial discrimination in the field of sport.

- **Over-use and misuse of the anti-extremism legislation**

44. ECRI has serious reservations in respect of the anti-extremism legislation. In its fourth report, it raised concerns over the broadness, lack of clarity and openness to different interpretations leading to arbitrariness of the Federal Law on Combating Extremist Activity. The law can be applied to extremely serious acts of terrorism as well as to more banal activities since no element of violence is required. While noting that the Supreme Court had issued instructions in 2011 on the interpretation of extremist activity, ECRI nevertheless strongly recommended, as matter of priority, revision of the definition of extremism to ensure that it only

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<sup>41</sup> Council of Europe GRECO 2017.

<sup>42</sup> UN CERD 2017.

<sup>43</sup> The Guardian 2018a; Independent Online 2018.

applied to serious cases involving hatred or violence. In its conclusions adopted on 17 March 2016, ECRI found that its recommendation had not been implemented. The authorities have since informed ECRI that the Plenum of the Supreme Court reiterated its interpretation of extremist activity by another ruling in November 2016.<sup>44</sup> They therefore consider the existing legal framework to provide unconditional guarantees of respect for human rights and requires no revision. ECRI notes that this view is not shared by international bodies, including the UN Committee on the Elimination of Racial Discrimination and the UN Human Rights Committee.<sup>45</sup>

45. ECRI further strongly recommended in its fourth report that the legislation should specify clearly the criteria to be met when declaring any material extremist. This recommendation has also not been implemented. Moreover, ECRI also remains concerned about the procedure for declaring material extremist. In practice, experts are called upon to provide an opinion which forms the basis of any legal proceedings. The law does not establish qualification requirements for experts, and they are usually selected from local educational institutions, including in disciplines of linguistics, political science, psychology and religion.<sup>46</sup> There is wide consensus in civil society that they are often unqualified for the task which can result in such far-reaching consequences as deprivation of liberty.
46. The Federal List of Extremist Materials maintained by the Ministry of Justice currently contains some 4 200 items, including books, videos, websites, social media pages, and musical compositions.<sup>47</sup> Recent entries include Islamic religious literature, a book about Christian women persecuted for their faith, Jehovah's Witnesses' brochures, an Orthodox fundamentalist pamphlet, atheist materials, and publications by political opponents.<sup>48</sup>
47. Regarding the possible over-use of the legislation, as noted above (see §19) the number of prosecutions for extremist activity is extremely high and increasing every year. Extremism mainly takes the form of on-line activity; according to an NGO, around 85% of incitement convictions involve materials posted on Internet. The authorities attribute this increase not to more extremist crime being committed, but to more effective identification and investigation by law enforcement authorities. ECRI welcomes this improved efficiency, however it notes allegations from civil society organisations that the police, having mastered the technology for investigating online content, tend to pursue minor matters which are easy to deal with but which do not always involve hate speech justifying a repressive response.<sup>49</sup> For example, in 2016 reports highlighted that libraries, schools and Internet clubs - unable to follow the constant updates to the Federal List of Extremist Materials - were fined for failing to block prohibited content or remove banned books.<sup>50 51</sup>
48. ECRI further notes that there is an extremely high conviction rate for offences of extremism with only around 0.4% of cases ending in acquittals. Reports indicate that the judiciary in Russia is not sufficiently independent and that judges remain exposed to pressure from powerful political and economic interests; this is further compounded by a criminal justice system which favours the prosecutorial

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<sup>44</sup> Ruling No. 41 of 3 November 2016 amended Ruling No. 11 of 28 June 2011.

<sup>45</sup> See ECRI's GPR No. 15, Explanatory Memorandum §63.

<sup>46</sup> Roudik 2014.

<sup>47</sup> SOVA et al. 2017.

<sup>48</sup> [www.sova-center.ru/en/misuse/reports-analyses/2017/09/d37819/](http://www.sova-center.ru/en/misuse/reports-analyses/2017/09/d37819/).

<sup>49</sup> SOVA et al. 2017.

<sup>50</sup> US Department of State, Bureau of Democracy, Human Rights and Labor 2016.

<sup>51</sup> Roudik 2014.

position, contradicting the principle of equality of arms.<sup>52</sup> NGOs have indicated concerns over respect for the principle of the presumption of innocence.

49. As for misuse of the legislation, ECRI recalls concerns expressed in its fourth report that the legislation was being used as an instrument of oppression against persons or organisations expressing politically unpopular opinions and minority religious groups. In 2016 there were reports of attacks, threats, censorship, arrests and prison sentences against both journalists and ordinary citizens who had posted or shared politically sensitive information online.<sup>53</sup> For example, in April 2016 a single mother in Yekaterinburg was sentenced to 320 hours of corrective labour for sharing Internet links which were critical of the country's military interference leading to armed conflict in Eastern Ukraine and deemed "insulting and degrading to Russian people".<sup>54</sup> Jehovah's Witnesses have also been a constant target of the legislation (see the section on topics specific to the Russian Federation). According to the SOVA Center, roughly 10% of criminal convictions cannot be considered extremist.<sup>55</sup>
50. Similar concerns have been raised about the procedure for blocking access to websites, sometimes without a court order (see §34), which may be used to filter or censor the Internet, restrict access to organisations considered undesirable and stifle dissent. For example, under these powers the blog of opposition figure Alexei Navalny and a site run by Garry Kasparov, a vocal critic of the Russian Government, were blocked in 2014.<sup>56</sup> ECRI refers to the extensive case law of the European Court of Human Rights on freedom of expression (Article 10) and the fundamental nature of free political debate in a democratic society, and to its GPR No. 15 on combating hate speech.<sup>57</sup>
51. Finally, ECRI is concerned that the anti-extremism legislation is applied in a selective manner. For example, it has never been applied to combat anti-LGBT hate crime and hate speech despite these being extremely widespread (see above and §109).
52. ECRI strongly recommends that the authorities amend the anti-extremism legislation and its application in light of the concerns raised above (§§44-51). They should also ensure that the various responses to offences of extremism, including hate speech, are not used to suppress legitimate criticism of official policies, political opposition or religious beliefs, in line with ECRI's General Policy Recommendation No. 15 on combating hate speech.

### **3. Racist and homo/transphobic violence**

53. Article 282, paragraph 2, of the Criminal Code on incitement of hatred or enmity, as well as abasement of human dignity, provides for the punishment of such acts committed with the use of violence or threat of its use. Certain other offences, such as murder, various degrees of bodily injury, battery, torture, hooliganism and vandalism provide specifically for heavier penalties when motivated by political, ideological, racial, national (meaning ethnic) or religious hatred or with respect to a social group. Article 63 of the Criminal Code provides for higher penalties for any other offence motivated by the same grounds.

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<sup>52</sup> See Council of Europe Commissioner for Human Rights 2016 and GRECO 2018.

<sup>53</sup> Freedom House 2017.

<sup>54</sup> US Department of State, Bureau of Democracy, Human Rights and Labor 2016.

<sup>55</sup> SOVA et al. 2017.

<sup>56</sup> BBC 2014; Reuters 2014.

<sup>57</sup> See in particular GPR No. 15, Recommendation 10 and Explanatory Memorandum §§62, 63, 171, 180.

- **Data**

54. As noted above, Russia no longer reports hate crime data to OSCE-ODIHR. According to data collected by the SOVA Center,<sup>58</sup> in 2017 at least 71 people were victims of racist violence, six of whom died as a result. 28 of the attacks were motivated by ethnicity; migrants from Central Asia were the most numerous victims, followed by persons of unidentified “non-Slavic appearance”. In 2016, 82 people were injured in racist attacks and 10 killed.
55. ECRI is therefore pleased that the number of racist murders has declined in recent years<sup>59</sup> and violent crime in general decreased by more than 30% in 2017 as compared to the previous year, according to the authorities. Neo-Nazi attacks in particular have fallen dramatically and the main organised radical groups are now in decline although they have not disappeared completely. ECRI commends the authorities for this achievement.
56. In addition to Central Asians and others of non-Slav appearance, Roma and Black people are also frequent victims.<sup>60</sup> A university student from Chad was brutally murdered in February 2017 in Kazan by a neo-Nazi gang, which had previously attacked a worker from Kyrgyzstan and a student from India. In August 2017, three students from Iraq were beaten up in Oryol. In the latter case, criminal investigations of the offences of hooliganism and battery are on-going. Some attacks, particularly against adolescents and women, were notable for their extreme harshness.<sup>61</sup>
57. As for violence based on religious hatred, antisemitism was manifested in 2017 in around seven cases of vandalism of synagogues and Jewish cemeteries (including in Kaliningrad and Petrozavodsk), and destruction of memorial plaques at places where Jews were murdered during World War II (in Pskov Oblast, Tver Oblast and Volgograd).<sup>62</sup> In September 2017 the Moscow offices of the Federation of Jewish Communities of Russia were attacked with a fire bomb; no one was hurt and damage was minimal.<sup>63</sup> No cases of violent antisemitic acts against persons were recorded in 2017. Two attacks against Jehovah’s Witnesses were registered in 2017 and 18 in 2016; these may have been provoked by people emboldened by the general crack down on this religious group by the authorities. On the other hand, Muslims are rarely attacked on account of their faith but rather because they are perceived to be migrants.<sup>64</sup>
58. Despite the anti-Ukrainian rhetoric of recent years, attacks against Ukrainians are rare, possibly because they are hard to identify. However, one attack was recorded in Chelyabinsk in July 2017, in which five skinheads beat up an 18-year-old Ukrainian national while shouting xenophobic anti-Ukrainian insults.<sup>65</sup>
59. The number of attacks against LGBT persons increased in 2017 as compared to the preceding year: 11 persons were injured in 2017 and in 2016 one was killed and four injured.<sup>66</sup> Most of the victims were attacked while attending LGBT events, such as the LGBT Pride in Saint Petersburg. According to data collected by Russian LGBT Network, between 2012 and 2015 there were 139 hate crimes

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<sup>58</sup> SOVA 2018.

<sup>59</sup> In 2012, there were 20 racist murders; in 2013, 24; in 2014, 36; and in 2015, 12, based on SOVA Center monitoring.

<sup>60</sup> UN CERD 2017.

<sup>61</sup> SOVA et al. 2017.

<sup>62</sup> SOVA et al. 2017.

<sup>63</sup> Arutz Sheva Israel National News 2017.

<sup>64</sup> SOVA 2018.

<sup>65</sup> SOVA 2018.

<sup>66</sup> SOVA 2018.

committed against LGBT persons.<sup>67</sup> Other research based on an analysis of nearly 5 000 articles in both federal and regional newspapers, news websites and magazines, shows that from 2011 to 2016, the Russian media reported on at least 363 instances of crime against LGBT people, including attacks on gay clubs, domestic violence, extortions and violence during political demonstrations, and robbery.<sup>68</sup> ECRI notes that the real numbers could be even higher, since LGBT victims are not open about their identity and unwilling to resort to law enforcement authorities. They fear outing (forced disclosure of their sexual orientation or gender identity) as well as humiliation by the police.<sup>69</sup>

60. On 1 April 2017, the newspaper Novaya Gazeta reported that over 100 men, perceived to be gay, had been arrested and detained in the autonomous republic of Chechnya. Victims had allegedly been mistreated, tortured and forced to disclose the identity of other LGBT persons. Reportedly, at least three men had been killed.<sup>70</sup> Reports continued to emerge that men were violently abused in up to six different camps set up by Chechen forces. One man who was released reported that he was subjected to violent interrogations as Chechen officials attempted to get him to confess the names and locations of more gay men. According to another survivor's account, the regional authorities instructed parents to murder their gay children for honour.<sup>71</sup>

- **The authorities' response**

61. Statistics gathered by SOVA Center show that 59 offenders were convicted for extremist activity involving violence in 2015 and 44 in 2016. There was a significant decrease in 2017, with 24 persons convicted. ECRI notes that in April 2018, a court in Saint Petersburg found 18 Russians guilty of committing 36 hate crimes, including the murder of an Uzbek man. All the victims of the group were non-Russian, mainly from the Caucasus and Central Asia. ECRI is particularly concerned that 14 of the perpetrators were younger than 18 when the crimes were committed.<sup>72</sup> According to an academic paper presented in 2016, the most actively developing form of extremism is youth extremism.<sup>73</sup>

62. ECRI recommends that the authorities look into youth engagement in serious hate-motivated violence and take steps to prevent this phenomenon, such as by developing teaching materials to combat youth extremism.

63. The authorities informed ECRI that the Ministry of Internal Affairs regularly provides training and procedural support for anti-extremism efforts and has set up an Academic and Research Section bringing together representatives of various bodies, including the territorial divisions on countering extremism, the Federal Security Service, the Prosecutor General's Office, as well as leading academics. Furthermore, police are trained in identifying hate crime, as well as in aspects of religious and cultural tolerance, and that prosecutors specialising in crimes of extremism are re-trained every three years. ECRI encourages the authorities to intensify further their law enforcement training efforts and in particular to respond to current realities by including an LGBT perspective in all training. As noted above, LGBT people also experience particular difficulty in reporting hate crime.

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<sup>67</sup> Moscow LGBT-Initiative group "Stimul" et al. 2017.

<sup>68</sup> Open Democracy 2017.

<sup>69</sup> Pink News 2017c.

<sup>70</sup> The Economist 2017.

<sup>71</sup> Pink News 2017d and 2017e.

<sup>72</sup> Radio Free Europe Radio Liberty 2018.

<sup>73</sup> Zinchenkoa et al. 2016.



64. ECRI recommends that the authorities facilitate cooperation between LGBT communities and the police and establish regular dialogue with a view to improving reporting and preventing and combating homo/transphobic violence.
65. The serious allegations concerning a purge of gay men in Chechnya have led to international calls for an investigation.<sup>74</sup> Following a series of denials from the regional and national authorities, the Investigative Committee eventually visited the location in May 2017 but found the site derelict.<sup>75</sup> ECRI was informed that the High Commissioner for Human Rights of the Russian Federation went to Chechnya to investigate but found insufficient evidence to confirm the allegations. According to ILGA Europe, around 300 men were affected by the purge; some 100 of these have now left the Russian Federation, 80 have relocated to other parts of the country, and 15 have died (as a result of torture, honour killings or suicide).<sup>76</sup> ECRI considers that the authorities should remain vigilant and publish the findings of all investigations.
66. ECRI notes that in addition to LGBT persons bearing the brunt of Russia's policies on "traditional values", women are now also falling victim to this trend. It is particularly concerned about the decriminalisation of some forms of domestic violence in 2017. This came about as a response to opposition, mainly by the Russian Orthodox Church, to the criminalisation in July 2016 of violence against one's relatives. ECRI regrets the strong message to the public that violence against women is acceptable, which opens the doors also to discrimination and stereotyping of women on account of their gender, and urges the authorities to revise the new law.<sup>77</sup>

#### 4. Integration policies

67. Russia is a multi-ethnic country with a long tradition of ethnic diversity. The 2010 census identified more than 190 different ethnic/national groups in the Russian Federation.<sup>78</sup> In this context, ECRI refers to the work of the Council of Europe's Advisory Committee of the Framework Convention for the Protection of National Minorities<sup>79</sup> (FCNM) for details on minority rights, in particular with regard to the expression of a separate identity of national minorities. In this section ECRI concerns itself with three specific groups and their integration into Russian society: Roma, refugees/beneficiaries of temporary asylum and migrant workers from other parts of the former USSR. In order to assess their situation, existing policies and steps taken by the authorities to promote better integration, as well as remaining obstacles and problems, will be analysed.
68. In December 2012, the authorities adopted the Strategy on State Nationalities Policy for the period until 2025. Its main objectives are the "consolidation of the all-Russian civil consciousness and spiritual community of the multinational people of the Russian Federation (Russian nation)", the "preservation and development of ethno-cultural diversity" and the "harmonisation" of inter-ethnic relations. It aims at ensuring equal rights and freedoms irrespective of ethnicity, language and religion, as well as the "adaptation and integration" of migrants. The strategy is to be implemented by the federal programme "Strengthening Russian National Unity and the Ethnocultural Development of the Peoples of

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<sup>74</sup> European Parliament News 2017; Council of Europe Secretary General 2017.

<sup>75</sup> Pink News 2017f.

<sup>76</sup> Council of Europe, LGBTI in Europe, Think Together conference 2018.

<sup>77</sup> See UN Human Rights Council 2018 and UN CEDAW General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

<sup>78</sup> According to the 2010 census, 80.9% of the population self-identified as ethnic Russians, with Tatars being the country's second largest ethnic group with 3.87%. See Minority Rights Group Europe (2014): 5.

<sup>79</sup> The Russian Federation ratified the Framework Convention for the Protection of National Minorities in 1998. The Advisory Committee of the FCNM carried out its last visit to the country in October 2017.

Russia (2014–2020)” which has the stated goal of facilitating a shift from an ethnic Russian identity to a broader civic Russian self-identification as the basis for a “civic nation”, which can serve as an umbrella for all ethnic groups in the country.<sup>80</sup> ECRI, in principle, welcomes this approach which could be an appropriate concept to reflect the diversity of the country and to build and strengthen an open and inclusive society, without rejecting the relevance of ethnicity completely. However, ECRI also notes that several observers point to a trend in which this “unity-in-diversity” approach has become increasingly tilted (visible also in the allocation of financial resources) towards the unity-aspect, at the expense of the diversity-element. The NGO ADC Memorial, for example, comes to the conclusion that there is reason to fear that government efforts to create a “united nation” could end in the infringement of the rights of ethnic minorities.<sup>81</sup> ECRI therefore strongly encourages the authorities to ensure that the building of a civic Russian identity is indeed underpinned by full respect for ethnic diversity and that this notion should not be misused as a tool for top-down imposed nationalism (see also §91).

69. As noted in §11 above, the Federal Agency for Nationality Affairs (FANA) was created in 2015 and tasked, inter alia, with the “implementation of measures aimed at enhancing the unity of the multinational people of the Russian Federation (Russian nation)”, to “ensure inter-ethnic harmony”, to “control the enforcement of the state national policy” and to “prevent any forms of discrimination on racial, ethnic, religious or linguistic grounds”. The FANA is mandated to work closely with the so-called national and cultural autonomies (officially recognised representatives of the respective ethnic/national groups).<sup>82</sup>

- **Roma**

70. There are an estimated 825 000 Roma residing in the Russian Federation,<sup>83</sup> although during the 2010 census only about a quarter of this number declared their affiliation with this group. The Roma population is internally diverse and consists of many different communities with various languages, religious affiliations and geographical backgrounds.<sup>84</sup> In its 2017 conclusions, the United Nations Committee on the Elimination of Racial Discrimination (CERD) expressed concern that the data provided by the Russian Federation did not provide a comprehensive appraisal of the enjoyment of economic and social rights, such as housing, education, employment and health care, disaggregated by ethnic groups including Roma.<sup>85</sup>
71. In its fourth report, ECRI encouraged the Russian authorities to finalise and implement the national Roma plan and to work in close cooperation with representatives of the Roma communities in all stages of its planning, implementation and evaluation, seeking guidance from its General Policy Recommendation No. 13 on anti-Gypsyism and discrimination against Roma.<sup>86</sup> In this respect, ECRI notes positively that a national Roma Action Plan for the

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<sup>80</sup> Fourth Report submitted by the Russian Federation pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities 2016: 59; and Anti-Discrimination Centre Memorial 2016: 3.

<sup>81</sup> ADC Memorial 2016: 3.

<sup>82</sup> Fourth (FCNM) Report submitted by the Russian Federation 2016: 7.

<sup>83</sup> Council of Europe Roma & Travellers team. Information provided by the Russian authorities to the Council of Europe’s CAHROM refers to estimates of around 500 000 Roma in the Russian Federation; see CAHROM 2017: 20.

<sup>84</sup> ECRI’s fourth report on the Russian Federation: §120.

<sup>85</sup> UN CERD 2017: §7.

<sup>86</sup> ECRI’s fourth report on the Russian Federation: §127.

period 2013-2014<sup>87</sup> was adopted by the authorities. According to the information ECRI obtained, this was done in consultation with the Federal National Cultural Autonomy of Russian Roma, the President of which has since also become a member of the FANA Advisory Board. Whether this consultation process was sufficiently inclusive and broad-based to reflect the diversity within the Russian Roma community, ECRI could not ascertain.

72. According to information submitted by the Russian Federation to the Council of Europe's Ad Hoc Committee of Experts on Roma and Traveller Issues (CAHROM), the Roma Action Plan put in place a monitoring system at regional and local level in order to collect relevant information, inter alia, on Roma demography, their levels of social and economic development, number of Roma pupils and students, access to nationality and identity documents, knowledge of Russian, Romani and regional languages and access to social services, housing and transport.<sup>88</sup> However, ECRI has not received any further details from the authorities on the functioning and effectiveness of this system. As it is clear that reliable data is the basis for solid and evidence-based responses to unmet needs of members of the Roma community, ECRI strongly encourages the authorities to evaluate, and if necessary strengthen and modify, this monitoring system.
73. As the main achievement of the Roma Action Plan, the Russian authorities highlight a pilot project carried out in two schools in the Moscow and Smolensk regions. This project provided 71 Roma children of pre-school age with skills to prepare for their entry into the school system, additional Russian language classes for 50 Romani-speaking children and facilitated awareness-raising for 230 parents and a number of teachers on how to better support Roma children in schools. A bilingual textbook for Roma pupils studying Russian as a second language and a Russian language course methodology were also developed.<sup>89</sup> While this particular activity might have had a positive impact on the children who benefitted from it, ECRI is concerned about the very limited scale of this project. Considering the overall size of the Roma population in the Russian Federation, it has serious doubts as to the effectiveness and adequateness of the national Roma Action Plan and its mode of implementation.
74. The authorities also informed ECRI that a new national Roma Action Plan for the years 2018 to 2020 was adopted in January 2018. Its priorities continue to be in the areas of education, improving access to ID documents and supporting Roma organisations in their cultural and outreach activities. While a similar consultation process as for the previous Action Plan appears to have taken place with the Roma Cultural Autonomy, no in-depth evaluation of the Roma Action Plan (2013-2014) and its implementation was carried out. This is regrettable considering its serious shortcomings in terms of overall results, as noted above.
75. ECRI recommends that the authorities carry out an evaluation of the impact of their Roma-related activities, in particular the national Action Plans for Roma, with a view to ensuring concrete actions and progress being delivered on an appropriate and sufficiently large scale, reflecting the size and diversity of the Roma community in the country and the problems its members face.
76. With regard to the situation of Roma pupils, ECRI notes that the Russian Federation provided information to CAHROM on the creation of separate "Roma classes" in certain schools.<sup>90</sup> ECRI is concerned that this is presented by the

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<sup>87</sup> The "Comprehensive Action Plan for the social, economic, ethnic and cultural development of the Roma over the period 2013-2014".

<sup>88</sup> CAHROM 2017: 21.

<sup>89</sup> Other results include a survey carried out by the FANA on "Socio-economic, ethno-cultural and legal problems of Roma in Russia".

<sup>90</sup> CAHROM 2017: 22.

Russian authorities<sup>91</sup> as a tool for responding flexibly to the situation and needs of Roma children. It reminds the Russian authorities that any form of ethnic segregation, including in the form of so-called “Roma classes”, should be strictly avoided<sup>92</sup> and draws their attention to the relevant case law of the ECtHR in this respect.<sup>93</sup> ECRI is also concerned about reports from civil society organisations describing other cases of racial segregation in certain schools, for example in the Volgograd area, involving separating Roma children from others during school-meals, use of the school library or sports activities. Furthermore, ECRI heard allegations from NGOs that Roma pupils are sometimes asked by their school administration not to participate in celebrations to mark the beginning of the new school year. While ECRI underlines that the information it received may refer to isolated cases, with no suggestion that the actions in question have been carried out upon instructions from the authorities or were condoned by them, it notes that in spite of NGOs mentioning that they reported these incidents to the authorities, ECRI is not aware of any investigations into these specific allegations.<sup>94</sup>

77. ECRI recommends that the Russian authorities ensure that Roma children are fully integrated into regular educational establishments and that no separate “Roma classes” are set up. Furthermore, the authorities should thoroughly investigate allegations of segregation of Roma pupils in schools, take strong action in case of any evidence found for such acts and remind all school principals that racial segregation is prohibited under Russian law.

78. In the past, forced evictions and demolition of non-regularised Roma houses without adequate safeguards (such as a prior examination of the proportionality and consultations about possible rehousing options) gave rise to serious concern.<sup>95</sup> The situation of many Roma settlements remains unresolved and ECRI has not received any information about effective measures put in place by the authorities to systematically prevent any re-occurrences of forced evictions without adequate safeguards in the future.<sup>96</sup> It therefore strongly encourages the Russian authorities to take steps towards this end without delay.

- **Refugees and beneficiaries of temporary asylum**

79. As of October 2017, there were 593 persons with refugee status registered in the Russian Federation. About half (294) were from Afghanistan, with Ukrainians (178) being the second largest group. Only two Syrians featured in this category. At the same time, 167 762 persons had temporary asylum (a form of subsidiary protection), the vast majority of them Ukrainians (165 485). There were also 1 292 Syrians benefitting from this status, as well as 417 Afghans. ECRI was informed by the authorities, that the overall number of beneficiaries of this form of protection is quickly diminishing, as a special fast-track option to Russian citizenship has been put in place for those who fled the armed conflict in Eastern Ukraine and who are in many cases ethnic Russians and/or Russian-speakers.

80. The State Migration Policy 2012-2025 includes references to the integration of recognised refugees and beneficiaries of temporary asylum. Access to health-

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<sup>91</sup> CAHROM 2017: 22.

<sup>92</sup> See also ECRI's GPR No. 13, §4d.

<sup>93</sup> See for example *Sampanis and others v. Greece* (application no. 32526/05); *Sampani and others v. Greece* (application no. 59608/09); and *Lavida and others v. Greece* (application no. 7973/10).

<sup>94</sup> The authorities informed ECRI that no instances of segregation of Roma children in schools have been officially recorded, and that during 2017-2018 the Committee for Education, Science and Youth policy of the Volgograd Oblast has not received any complaints concerning such matters from parents or legal guardians.

<sup>95</sup> See for example *Bagdonavicius and others v. Russia* (application no. 19841/06); and International Federation for Human Rights (FIDH)/ADC Memorial 2008, especially 36-43.

<sup>96</sup> See also the concerns raised in this respect by the UN Committee on Economic, Social and Cultural Rights 2017: §§46-47.

care, education and employment is granted on the same basis as for Russian citizens. Those who remain unemployed, however, are not entitled to social welfare benefits. The authorities indicate that persons in this situation should remain in the initial reception centres. There are 10 such centres across the country, but as they are also tasked with accommodating Displaced Persons from the Caucasus region, and only a total of 400 places are available to foreign nationals, it remains uncertain as to whether there is sufficient capacity. The situation of people who do not speak Russian is particularly difficult, as the authorities do not offer Russian-language training as a standard integration measure.<sup>97</sup> Given that integration generally, and finding employment in particular, depends heavily on learning the national language, this absence of widespread access to free Russian-language courses is of concern.

81. ECRI notes positively that the Russian authorities provided immediate and large-scale assistance to the high number of people fleeing the armed conflict in Eastern Ukraine since 2014. Integration support consisted, inter alia, of housing as well as vocational training courses. These measures were, on the whole, praised by the various civil society organisations ECRI met with, but they were not extended to refugees and beneficiaries of temporary asylum from other countries.

82. ECRI recommends that the authorities strengthen the integration of refugees and beneficiaries of temporary asylum by (i) applying best practices and successful integration measures that have been made available to those who fled the armed conflict in Eastern Ukraine in recent years also to persons from other countries of origin; (ii) providing free-of-charge access to Russian-language courses; and (iii) granting an entitlement to social welfare payments to those who are unemployed and without sufficient financial means.

- **Migrant workers from other parts of the former USSR**

83. A large number of migrant workers from other parts of the former USSR reside in the Russian Federation. Estimates of annual numbers range from two to five million. In the period 2011-15, citizens of former Soviet Republics made up around 90% of the total influx of authorised migrants, with most work permits having been allocated to citizens of Uzbekistan (45%), Tajikistan (some 20%) and Ukraine (9%).<sup>98</sup> In its fourth report, ECRI pointed to the problems migrant workers often faced because of difficulties to regularise their status and exploitative employment conditions. It also highlighted problems resulting from corruption and the ineffectiveness of systems that should protect migrant workers from abuse. ECRI received information that many of these problems still persist, in particular (but not only) for persons who do not qualify for the visa-free regime described below.<sup>99</sup>

84. In 2018, ECRI's delegation visited the Sakharovo Migration Centre<sup>100</sup> in a suburb of Moscow. The recently built centre is intended as a "one-stop shop" mainly for migrants benefitting from the visa-free entry regime (available to citizens of Azerbaijan, Moldova, Tajikistan, Ukraine and Uzbekistan) to obtain a "patent" allowing them to seek employment.<sup>101</sup> All relevant administrative procedures are dealt with at one time, including submission of the necessary documents, medical procedures, test of Russian language and civic knowledge (law and history), and

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<sup>97</sup> Some private initiatives and charitable organisations offer Russian-language courses, but on a limited scale.

<sup>98</sup> Migration Policy Institute 2017.

<sup>99</sup> See also Minority Rights Group Europe 2014: 11.

<sup>100</sup> This should not be confused with the immigration detention facility, which is located in close proximity.

<sup>101</sup> Citizens of Belarus and Kazakhstan have the right to work in the Russian Federation without requiring a patent or other form of permit.

fingerprinting, with the patent issued 10 days later. ECRI gained a positive impression during its visit and was informed that the centre had contributed to reducing irregular migration and illegal employment and the patent system afforded better protection to migrant workers. The authorities consider that since the process is now more easily accessible, the patent-system helped to reduce the exploitative practices of intermediary agencies. These agencies took advantage of the situation by offering to arrange the necessary documentation and employment contract, usually at a very high cost and often resulting in migrant workers obtaining incomplete or invalid documents which placed them in a very vulnerable situation. ECRI has no information about the conditions in similar centres in other parts of the country, but encourages the authorities to apply best-practices from the Sakharovo Centre also in other such facilities.

85. While there is no evidence yet to show that the exploitation of migrant workers by employers has been reduced as a result of the patent-system, victims are in a stronger position to complain about such practices. This is also due to the fact that patents are not tied to a particular employer. In this context, ECRI reminds the authorities of the recommendation made in its fourth report concerning the establishment of an Ombudsman structure specifically for labour migrants.

86. ECRI recommends that the authorities include the function of a complaints mechanism for migrant workers in the mandate of the Federal Agency for Nationality Affairs, seeking guidance from its revised General Policy Recommendation No. 2.

87. ECRI also received positive information about support activities organised by the city administration of Saint Petersburg in recent years to promote the integration of migrant workers, including through inter-cultural exchanges and festivities. However, ECRI also heard allegations about migrant workers from Central Asia often becoming victims of police harassment and racial profiling (see also §§92-97). The latter problem has reportedly increased in particular in the aftermath of the Saint Petersburg metro bombing in 2017. It is obvious that racial profiling and police harassment are also obstacles to integration of migrant workers, as such experiences alienate the individuals concerned, and by extension the wider relevant groups they belong to, and diminish trust in the state authorities. According to the information ECRI obtained from NGOs, migrant workers rarely complain about their treatment by the police as they feel that their legal status renders them particularly vulnerable. ECRI refers to its findings in the sections on hate speech and violence and to its priority recommendation in §97.

## **II. Topics specific to the Russian Federation**

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

88. In its fourth report, ECRI urged the authorities to find ways to identify those Russian nationals, non-nationals and stateless persons who face obstacles in the residence registration procedure and facilitate their registration, so that they are not denied access to their rights. In its conclusions adopted on 17 March 2016, ECRI found that, in the absence of any information from the authorities on action taken, its recommendation had not been implemented.

89. Since then, the authorities have informed ECRI that amendments to the relevant legislation have been made, including the following: the introduction of the right of “citizens” to submit documents for residence registration in electronic form; reduced document requirements; exemption from temporary registration if the duration of stay does not exceed 90 days or permanent residence is already registered in the same constituent entity of the country; and exemption from administrative liability for residing without temporary residence registration where persons are close relatives of the tenants or owners who have permanent residence registration in the accommodation in question. While these appear to

be positive developments for Russian nationals, ECRI reiterates that residence registration should also be facilitated for non-nationals and for stateless persons.

90. ECRI's recommendation concerning the Federal Law on Combating Extremist Activity has been addressed in the section above on hate speech (see in particular its new recommendation in §52).
91. In its fourth report, ECRI strongly recommended that the authorities restore the programme on tolerance in Russian society across the country. In its conclusions of 17 March 2016, ECRI found that although a large number of projects focusing on interethnic issues received government grants, many of these placed greater emphasis on patriotism than on promoting tolerance, and that its recommendation had not been implemented. Since then, ECRI was informed by the authorities that the programme on tolerance in Saint Petersburg is still in place, but there appears to be no similar nation-wide programme.

## **2. Racial profiling and other police misconduct**

92. In its fourth report, ECRI made a series of recommendations relating to the police, including: clearly define and prohibit racial profiling by law; ensure that there is a body competent to investigate all complaints against the police involving allegations of racial discrimination; and continue efforts to reform the police and crack down on corruption and crime committed by them, in particular against vulnerable groups.
93. As concerns racial profiling,<sup>102</sup> ECRI regrets that this has not been defined and prohibited by law as recommended in its GPR No. 11 on combating racism and racial discrimination in policing. According to numerous reports, this practice by the police continues to be widespread; racial profiling is manifested in arbitrary identity checks and unnecessary arrests, targeting in particular migrants from Central Asia and the Caucasus, and Roma.<sup>103</sup> ECRI considers racial profiling harmful because it institutionalises prejudice and legitimises discriminatory behaviour among the general public towards members of certain groups.<sup>104</sup>
94. Many NGOs informed ECRI that it is common to see these categories of persons stopped by the police on the pretext that there may be irregularities with their documents. Such encounters allegedly often end in the payment of bribes to police to drop any further action. According to a 2014 poll, the public perceive police as the most corrupt of government agencies.<sup>105</sup>
95. ECRI is also concerned about allegations that police systematically carry out beatings and extortion of persons assumed to be Roma, Central Asian or African.<sup>106</sup> Moreover, in 2015, the Russian LGBT Network recorded 21 abuses of LGBT persons by police, including refusals to accept reports, harassment of victims, humiliation and unlawful detention.<sup>107</sup> Jehovah's Witnesses have also reported cases of police planting evidence against their organisation. Such misconduct by the police seriously undermines trust in law enforcement by different segments of society and reduces overall security. On this point, ECRI notes that trust in the police remains low but is increasing: according to research published in 2017 by the Russian Public Opinion Research Centre (VCIOM), 67%

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<sup>102</sup> According to ECRI's GPR No. 11 on combating racism and racial discrimination in policing, racial profiling is the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities.

<sup>103</sup> UN CERD 2017.

<sup>104</sup> See ECRI's GPR No. 11, explanatory memorandum §34 (iii).

<sup>105</sup> Levada 2014.

<sup>106</sup> US Department of State, Bureau of Democracy, Human Rights and Labor 2016.

<sup>107</sup> LGBT Network 2015.

of Russians expressed trust in the police (compared to 47% in 2016) while 46% positively assessed the work of the police in their region (up from 24% in 2016).<sup>108</sup>

96. ECRI regrets that there is still no body independent of the police and prosecution authorities competent to investigate all complaints against the police. It considers that complaint mechanisms internal to the police (such as those of the Investigative Committee)<sup>109</sup> are insufficient since they lack impartiality and victims of police abuses do not have confidence in them.<sup>110</sup>
97. ECRI strongly reiterates its recommendation that the authorities set up a body independent of the police and prosecution authorities competent to investigate all complaints against the police, as per §10 of its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

### 3. “Foreign Agents” law

98. In its fourth report, ECRI indicated that it would keep a close watch on the application and effects in practice of the Federal Law on Non-Commercial Organisations of January 1996, as amended notably in July 2012, particularly in respect of civil society organisations engaged in the fight against racism and racial discrimination. This law requires NGOs that receive any foreign funding and engage in broadly defined political activity<sup>111</sup> to register as “foreign agents”. Amendments introduced in 2014 authorise the Ministry of Justice to register organisations as “foreign agents” without their consent. Registered NGOs are subject to additional onerous audits and are obliged to disclose in all their official publications and statements that these are made by a “foreign agent” – a term which in Russian refers to a “spy” or “traitor” and which stigmatises NGOs and tarnishes their reputation. The list of active “foreign agents” now includes 158 NGOs, only a handful of which have registered voluntarily.<sup>112</sup>
99. The law and its heavy-handed application have been criticised both nationally and internationally, including by the Council of Europe’s Secretary General and Venice Commission, the European Union and the OSCE.<sup>113</sup> Many NGOs have been fined large amounts for failing to comply with the law, and about 30 groups have shut down rather than wear the “foreign agent” label. Organisations affected include those engaged in human rights, the environment, LGBT issues, health matters and women’s groups. Further, ECRI is concerned that some NGOs have reported harassment, raids on their premises and pressure to close down. Many reported that they consider civil activism to be destroyed in Russia. This is of concern to ECRI, since a vibrant civil society is a prerequisite for any healthy democracy and effective protection of vulnerable groups.
100. ECRI strongly recommends amendment of the Law on Non-Commercial Organisations, in particular to abandon the term “foreign agent”, clearly define “political activities”, remove the power to register organisations without their consent, review the obligations of non-commercial organisations and apply legal sanctions only in case of serious wrongdoing.

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<sup>108</sup> <https://wciom.com/index.php?id=61&uid=1481>.

<sup>109</sup> See footnote 13.

<sup>110</sup> See §58 of the explanatory memorandum to ECRI’s GPR No. 11.

<sup>111</sup> Although amendments of 20 May 2016 attempted to define more precisely the notion of “political activity”, the definition was actually broadened, explicitly including many habitual and legitimate activities of civil society groups. See Council of Europe Commissioner for Human Rights 2017.

<sup>112</sup> Human Rights Watch 2018.

<sup>113</sup> See in particular Council of Europe Venice Commission 2014.



#### 4. Ban on Jehovah's Witnesses

101. ECRI expressed concern in its fourth report that the anti-extremism legislation was being used against certain minority religions, notably Jehovah's Witnesses. Regrettably, the situation has deteriorated substantially since then. On 20 April 2017, the Supreme Court declared the Jehovah's Witnesses Administrative Centre in the Russian Federation an extremist organisation and ordered its liquidation together with all 395 local organisations of Jehovah's Witnesses, as well as confiscation of their property. On 17 July 2017 the Appeal Chamber of the Supreme Court dismissed an appeal against the judgment. The Ministry of Justice has added the Administrative Centre of Jehovah's Witnesses to its list of banned organisations on grounds of extremism. The ruling effectively bars Jehovah's Witnesses from practising their faith throughout the country.<sup>114</sup> Moreover, those who continue to worship are liable to punishment under Article 282.2 of the Criminal Code by engaging in the activities of a banned organisation.
102. A number of Jehovah's Witnesses have been convicted and sentenced to imprisonment and fines, and applications to the ECtHR are pending.<sup>115</sup> The so-called "criminal activity" they were accused and convicted of consisted of the following: inciting religious discord and advocating the exclusivity and superiority of a religion by degrading other religions; organising recruitment of new members; breaking up the marriage and family relationships; choosing only part-time work so as to devote more time to preaching; distributing extremist literature; inciting citizens to refuse to fulfil their civic duties by not entering military service; inciting members to reject medical treatment on religious grounds, in particular the transfusion of blood; and involving minor children in the activity of the congregation.<sup>116</sup> ECRI recalls that criminal law has a symbolic effect which raises the awareness of society of the seriousness of the conduct and has a strong dissuasive effect. It fails to see how any of the above-mentioned acts could justify criminal prosecution (see also ECRI's recommendation in §52).
103. Furthermore, the ruling of 20 April 2017 has led to further measures having potentially wide-reaching implications for Jehovah's Witnesses. Under a resolution of the Plenum of the Supreme Court of 14 November 2017, parents may be deprived of their parental rights for involving their children in the activity of a banned public or religious association. The Ministry of Education has also issued a recommendation on "resocialisation of adolescents who have been subjected to destructive psychological influence", naming specifically children of members of the so-called Islamic State and children in families of Jehovah's Witnesses. ECRI is alarmed at the association of Jehovah's Witnesses with a terrorist organisation, which is seriously misleading and unreasonable and could lead to further acts of violence against this community (see §57 above).
104. ECRI is concerned by these developments, noting that Jehovah's Witnesses are another group whose departure from "traditional values" has prompted persecution and repression. It recalls that freedom of religion under Article 9 ECHR, including freedom to manifest one's religion, alone or in community with others, is one of the foundations of a pluralistic democratic society. ECRI notes that the Administrative Centre has lodged an application with the ECtHR, complaining, among others, about an unlawful, unjustified and discriminatory interference with their right to freedom of religion.<sup>117</sup>

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<sup>114</sup> There are some 172 000 Jehovah's Witnesses in the Russian Federation (see [www.jw.org/en/news/legal/by-region/russia/](http://www.jw.org/en/news/legal/by-region/russia/)).

<sup>115</sup> See *Samara LRO and others v. Russia and 6 other applications* (application no. 15962/15); and *Dennis Ole CHRISTENSEN v. Russia* (application no. 39417/17).

<sup>116</sup> See *Samara LRO and others v. Russia and 6 other applications* (application no. 15962/15).

<sup>117</sup> *Administrative Centre of Jehovah's Witnesses in Russia and Kalin v. Russia* (application no. 10188/17).

105. ECRI strongly recommends that the Russian Federation authorities reconsider their position and take steps to reverse the ban on Jehovah's Witnesses, as well as abandon all related measures involving their children.

## **5. Policies to combat discrimination and intolerance vis-à-vis LGBT<sup>118</sup>**

106. Prior to ECRI's visit to the Russian Federation in February 2018, the country's authorities informed ECRI's Secretariat that they do not recognise ECRI's competence in the field of protection and promotion of LGBT rights. ECRI took note of this view, but nevertheless includes the topic of LGBT-related discrimination in this report as it has done for all other member States during its fifth monitoring cycle (see also footnote 3). The findings below, as well as those in the sections on hate speech and violence, point to a very difficult situation for LGBT persons and ECRI urges the authorities to work jointly with it towards addressing existing discrimination and intolerance in this area.

### **- Data**

107. There is no official data on the size of the LGBT population in Russia. According to Article 10 of the Personal Data Protection Act, data relating inter alia to a person's health or sex life are considered as "special categories of personal data" which cannot be collected, stored, used or disseminated without the person's written consent.<sup>119</sup> In this context, ECRI recalls Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity, which indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. It is clear that without such information there can be no solid basis for developing and implementing policies to address intolerance and discrimination of LGBT persons.

108. The Russian authorities have not replied to the Council of Europe's questionnaire on the implementation of Recommendation CM/Rec(2010)5 of the Committee of Ministers.<sup>120</sup> According to the information available to ECRI, there is no government funding or research in relation to identifying and monitoring discrimination against LGBT persons in Russia. On the ILGA Rainbow Europe Map 2016 reflecting European countries' legislation and policies guaranteeing LGBT rights, the Russian Federation ranks 48<sup>th</sup> out of 49 countries scored.<sup>121</sup>

### **- Legislative issues**

109. Sexual orientation and gender identity are not explicitly enumerated as prohibited grounds in the relevant provisions of the Criminal Code, such as Articles 282, 136 and 63 (see the section above on legislation). These Articles include a reference to "any social group" in their list of grounds and the Constitutional Court of the Russian Federation, in 2014, found that this term can apply to a group of individuals with a specific sexual orientation.<sup>122</sup> However, this interpretation does not seem to be reflected in regular court practice and ECRI is not aware of any further case law in this respect. The UN expressed its concern about the fact that Article 63 on aggravating circumstances does not appear to have ever been applied to cases involving violence against LGBT persons,<sup>123</sup> in spite of a high number of such incidents (see also the section above on violence). While the

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<sup>118</sup> For terminology, see the definitions set out in Council of Europe Commissioner for Human Rights 2011.

<sup>119</sup> Personal Data Protection Act 2006, as amended in 2009.

<sup>120</sup> For the viewpoint of the Russian Federation on this matter, see Council of Europe CDDH(2013)R77, Appendix IV; and CDDH(2012)R76, Appendix VI.

<sup>121</sup> ILGA-Europe 2016.

<sup>122</sup> Judgment of the Constitutional Court of the Russian Federation No. 24-P (23 September 2014).

<sup>123</sup> UN Human Rights Committee 2015.

authorities informed ECRI that they do not see a need to name sexual orientation and gender identity expressly in the list of grounds of the above-mentioned Articles, ECRI always advocates for explicitly mentioning these grounds in order to avoid any legal uncertainty and to convey to the general public the clear message that these groups benefit from the protection afforded by these Articles.

110. In the absence of comprehensive anti-discrimination legislation (see §§9-10), sectoral legislation, for example in the areas of employment or health, should be instrumental to protect LGBT persons from discrimination. The relevant laws, however, do not expressly enumerate the grounds of either sexual orientation or gender identity. The lists of protected grounds in Article 3 of the Labour Code and Article 5 of the Law on the Fundamentals of Health Care of Citizens in the Russian Federation are open, as indicated by the wording “any social group” or “other circumstances” respectively (see the preceding paragraph for why ECRI considers the explicit mentioning of grounds to be important).<sup>124</sup> In 2016, the NGO “Equal Rights Trust” criticised the absence of any relevant case law that could point to the inclusion of the grounds of sexual orientation or gender identity in practice in the application of these laws.<sup>125</sup> Since then, ECRI has identified information about one discrimination case, in which the ground of gender identity was taken into account by a Russian court.<sup>126</sup> Nevertheless, there is no indication that this has led to the necessary systematic inclusion of these grounds yet.

111. ECRI recommends that the authorities amend all existing legislation in order to include explicitly the grounds of sexual orientation and gender identity in the list of protected grounds, in particular in Articles 282, 136 and 63 of the Criminal Code, as well as in Article 3 of the Labour Code and Article 5 of the Law on the Fundamentals of Health Care of Citizens in the Russian Federation.

112. In 2013, legislation was enacted against providing certain information on homosexual relationships to minors. Federal Law no. 135-FZ of 29 June 2013<sup>127</sup> amended Federal Law no. 124-FZ of 24 July 1998 on the Main Guarantees of the Rights of the Child in the Russian Federation. A provision was introduced in Section 14 (protection of the child from information, propaganda and activism that is harmful to his or her health, morals and spiritual development) stating that the authorities shall take measures to protect children from information promoting so-called non-traditional sexual relationships. Furthermore, section 5 of Federal Law no. 436-FZ of 29 December 2010 on the Protection of Children from Information that is Harmful to their Health and Development was also amended by adding information promoting non-traditional sexual relationships to the list of information prohibited for dissemination to children.<sup>128</sup> Similarly, the Code of Administrative Offences was amended by introducing in its Article 6.21 liability for the promotion of non-traditional sexual relations among minors, expressed in the dissemination of information aimed at creating in minors a non-traditional sexual orientation, promoting the attractiveness of non-traditional sexual relationships, creating a distorted image of the social equivalence of traditional and non-traditional sexual relationships, or imposing information about non-traditional sexual relationships that leads to arousing interest in such relationships. Where these activities do not contain acts punishable under criminal law, they are subject to the imposition of administrative fines.<sup>129</sup>

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<sup>124</sup> Equal Rights Trust 2016: 35 and 37.

<sup>125</sup> Equal Rights Trust 2016: 37.

<sup>126</sup> Meduza.io 2018.

<sup>127</sup> Law on the introduction of amendments [...] aimed at protecting children from information promoting the denial of traditional family values.

<sup>128</sup> See Bayev and others v. Russia (application nos.67667/09, 44092/12 and 56717/12): §§32-33.

<sup>129</sup> Bayev and others v. Russia: §34. These range from RUB 4 000-5 000 (around EUR 75) and increasing to RUB 40 000-50 000 (around EUR 750) for officials. Legal entities can be fined between RUB 800 000-

113. The Russian authorities underline that this legislation does not aim at prohibiting homosexuality and that the Constitutional Court of the Russian Federation found that the above-mentioned amendments to the Code of Administrative Offences are not contrary to the country's constitution.<sup>130</sup> In this respect, however, ECRI refers to the case of *Bayev and others v. Russia* in which the ECtHR found that the various general measures and their application violated Article 10 (freedom of expression) ECHR, in conjunction with Article 14 (prohibition of discrimination).<sup>131</sup> Furthermore, the ECtHR pointed out that by adopting such laws, the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society.<sup>132</sup>
114. ECRI has been informed by civil society organisations that these legislative provisions have had a severe impact on the life of LGBT persons in Russia (see also §§119 and 122-123 below). Although the provisions have not been applied very often so far, their ambiguity<sup>133</sup> and potential broad reach has had a chilling effect on groups working with and for LGBT persons, including those engaged in psycho-social support, awareness-raising and provision of medical information. It is often very difficult for such organisations to ensure the exclusion of all persons under 18 years from their public outreach activities, as the law appears to require. Activities are therefore often not carried out at all, depriving also adults of the possibility to obtain important information and assistance. In this context, ECRI also notes that the Joint United Nations Programme on HIV/AIDS (UNAIDS), as well as service providers and NGOs, have repeatedly pointed out that the existence of such legal provisions constitutes an obstacle to effective HIV-prevention work as it hinders the provision of targeted information to homosexual and bisexual male adolescents and men.<sup>134</sup> In addition, ECRI considers that such legal provisions reinforce to the public that LGBT persons are undesirable and could pave the way to further intolerance and violence towards them (see section I.3 above).
115. ECRI recommends, as a matter of priority, that the Russian authorities abolish the legal ban on the provision of information about homosexuality to minors (legislation on the so-called "promotion of non-traditional sexual relations among minors"), in line with the judgment of the European Court of Human Rights in the case *Bayev and others v. Russia*.
116. Concerning family law matters, the current legislation in the Russian Federation does not recognise any form of same-sex partnerships.<sup>135</sup> ECRI considers that the absence of recognition of same-sex partnerships can lead to various forms of discrimination in the field of social rights. In this regard, it draws the attention of the authorities to Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.<sup>136</sup>

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1 000 000 (around EUR 15 000) or receive an administrative suspension of their activities for up to 90 days.

<sup>130</sup> The authorities refer to the Constitutional Court of the Russian Federation, Judgement of 23 September 2014 (No. 24 P).

<sup>131</sup> *Bayev and others v. Russia*: §§84 and 92.

<sup>132</sup> *Bayev and others v. Russia*: §83.

<sup>133</sup> See for example Council of Europe Venice Commission 2013: §§28 and 31.

<sup>134</sup> UNAIDS 2014: 21-22 and 114-115. See also AIDS Action Europe April 2017; Nora FitzGerald/Pulitzer Center 2014; and UNAIDS 2012.

<sup>135</sup> Equal Rights Trust 2016: 109.

<sup>136</sup> Council of Europe Committee of Ministers 2010, in particular §25.

117. ECRI recommends that the authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live.

- **Gender reassignment**

118. According to Russian legislation, it is possible for transgender persons to change their legal gender marker and their name. Under Article 70 of the Federal Law on Acts of Civil Status (1997), a transgender person must submit a medical certificate confirming a sex change in order to do so. The Ministry of Health was required to approve a form for such a certificate already in 1998.<sup>137</sup> However, it was only on 2 February 2018 that a new Ministry of Health regulation for the issuing of certificates of gender reassignment finally entered into force. While in the interim period, the absence of such regulation caused problems for transgender persons (see §122 below), ECRI notes positively that LGBT groups consider the new procedure for changing one's gender marker to be clear and accessible, especially as it no longer requires the involvement of the courts. Instead, the persons concerned can request a certificate of "sexual reorientation" from the relevant Medical Commission, following a diagnosis of transsexualism. It appears that the new guidelines do not require any hormone therapy or surgery (and therefore, implicitly, also no sterilisation). Furthermore, hitherto existing restrictions for married persons or those with minor children have been dropped. ECRI commends the authorities for these steps and encourages them also to ensure that the new guidelines will be implemented in ways that are supportive of the needs of the persons concerned. Problems could, for example, arise due to the lack of a clear definition of the term "sexual reorientation" or the absence of an obligation for regional authorities to establish the relevant Medical Commissions. In this context, ECRI encourages the authorities to make use of existing guidance developed by various bodies of the Council of Europe on regulating the procedure for gender reassignment and legal gender recognition.<sup>138</sup>

- **Freedom of Assembly**

119. Despite the 2010 ECtHR judgment in the case of *Alekseyev v. Russia*, in which the court found that restrictions on peaceful public events promoting the rights of LGBT persons constituted a violation of, inter alia, Article 11 (freedom of assembly) and Article 14 (prohibition of discrimination) of the ECHR,<sup>139</sup> the situation has deteriorated further. In 2012, for example, Moscow City Council rejected an application to hold an LGBT pride parade. Furthermore, in 2016, a series of awareness-raising events planned by LGBT groups to celebrate occasions such as the International Day against Homophobia and Transphobia (IDAHOT) were not permitted by the authorities in various cities across Russia, including by referring to the existing legislation against promoting non-traditional sexual relations among minors.<sup>140</sup> The Russian authorities informed ECRI that in April 2015 they adopted an Action Plan to follow-up on the ECtHR ruling in the case of *Alekseyev v. Russia*.<sup>141</sup> However, according to information provided by the authorities to the Council of Europe's Committee of Ministers, during the period from 1 October 2015 to 30 June 2016, only one out of a total of 51 requests made in Russia to hold public LGBT events was granted.<sup>142</sup>

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<sup>137</sup> Moscow LGBT-Initiative group "Stimul" et al. 2017: 11.

<sup>138</sup> In particular, Council of Europe Committee of Ministers 2010, §§20, 21 and 22; Council of Europe Sexual Orientation and Gender Identity Unit 2015; and Council of Europe Commissioner for Human Rights 2009.

<sup>139</sup> *Alekseyev v. Russia* (application nos. 4916/07, 25924/08 and 14599/09).

<sup>140</sup> ILGA-Europe 2017: 198-200.

<sup>141</sup> The Action Plan is available at: [https://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["DH-DD\(2015\)405E"\]}](https://hudoc.exec.coe.int/eng#{)

<sup>142</sup> Council of Europe Committee of Ministers 2016a.

Subsequently, the Committee of Ministers, in its December 2016 examination of the status of execution of the Alekseyev judgment (enhanced procedure), expressed serious concern about the lack of improvement in this area.<sup>143</sup>

120. ECRI recommends that the Russian authorities fully implement the judgment of the European Court of Human Rights in the case of Alekseyev v. Russia and ensure that LGBT persons' right to freedom of assembly is respected.

- **Discrimination against LGBT persons in other key areas of social life**

121. Opinion polls show that public acceptance of same-sex relationships is very limited in Russia. A survey by the Levada Center, published in January 2018, for example, indicates that 83% of Russian respondents think it is "always reprehensible" or "almost always reprehensible" for two adults of the same sex to have sexual relations. Previous polls showed that the percentage of those who are opposed to same-sex relationships had already increased from 68% in 1998 to 76% in 2008.<sup>144</sup> In a 2014 survey carried out by the Public Opinion Research Centre, polling 1 600 persons in around 42 regions of the country, 80% of the respondents found same-sex relationships unacceptable, while only 3% considered them normal.<sup>145</sup> In a PEW global survey carried out in 2013, only 16% of Russians who participated agreed that society should accept homosexuality.<sup>146</sup>

122. ECRI is concerned about cases of homophobic groups collecting information on teachers who are LGBT (or known supporters of LGBT rights) on social networks and Internet fora, including about their private lives and civil society engagement, in order to forward such information to school administrations and educational authorities, demanding that teachers who "promote perversion" should be banned from schools. These activities allegedly resulted in the dismissal of a number of LGBT teachers across Russia. In 2014, Human Rights Watch documented seven such cases in which persons were threatened with dismissal or forced to leave their teaching jobs at universities, schools and educational centres. In almost all these cases, the smear campaigns referred to the legislation prohibiting "propaganda of non-traditional sexual relationships among minors" to underpin their demand for the teachers' dismissals.<sup>147</sup> Transgender persons are also reported to face frequent discrimination in employment, especially before obtaining legal gender recognition, due to the discrepancy between the gender stated in their documents and their appearance.<sup>148</sup> LGBT groups consider that the Russian courts are currently failing to provide adequate redress to LGBT victims of discrimination in the field of employment.<sup>149</sup>

123. Due to the legislation prohibiting "propaganda of non-traditional sexual relationships among minors", it is not possible to carry out awareness-raising activities for youngsters on LGBT issues, for example in schools. ECRI has no information about any awareness-raising activities targeting the general public concerning LGBT issues organised by the authorities. NGOs attempting to organise such events usually face massive obstacles when applying for the necessary authorisations (see §§119-120 above).

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<sup>143</sup> Council of Europe Committee of Ministers 2016b: §4.

<sup>144</sup> The Moscow Times online 2018.

<sup>145</sup> ILGA-Europe 2015: 139.

<sup>146</sup> PEW Research Center 2013.

<sup>147</sup> Human Rights Watch 2014. See also Equal Rights Trust 2016: 129.

<sup>148</sup> Transgender Legal Defense Project 2016: 13-29.

<sup>149</sup> Equal Rights Trust 2016: 130; and ILGA-Europe 2017: 197.

124. ECRI recommends that the authorities carry out an in-depth study on the areas and levels of discrimination faced by LGBT persons in Russian society. Furthermore, the authorities should promote and facilitate public LGBT awareness-raising and tolerance campaigns, including in schools.





## **INTERIM FOLLOW-UP RECOMMENDATIONS**

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

- ECRI strongly reiterates its recommendation that the authorities set up a body independent of the police and prosecution authorities competent to investigate all complaints against the police, as per §10 of its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.
- ECRI recommends, as a matter of priority, that the Russian authorities abolish the legal ban on the provision of information about homosexuality to minors (legislation on the so-called “promotion of non-traditional sexual relations among minors”), in line with the judgment of the European Court of Human Rights in the case *Bayev and others v. Russia*.

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



## LIST OF RECOMMENDATIONS

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

1. (§ 2) ECRI reiterates its recommendation that the Russian Federation ratifies Protocol No. 12 to the European Convention on Human Rights.
2. (§ 8) ECRI recommends that the following offences are added to the Criminal Code: public incitement to violence and to discrimination; racist public insults; trivialisation and justification, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; racial discrimination in the exercise of one's (private) occupation; and criminal liability for legal persons. In addition, the authorities should ensure that the grounds of colour, language and citizenship are included in all the relevant articles of the Criminal Code.
3. (§ 10) ECRI strongly reiterates its recommendation that comprehensive anti-discrimination legislation should be enacted setting out a clear prohibition of direct and indirect discrimination in all areas of life and on all grounds, in line with its General Policy Recommendation No. 7.
4. (§ 13) ECRI strongly recommends again that an independent equality body specialised in combating racism and intolerance is established, as set out in ECRI's revised General Policy Recommendation No. 2.
5. (§ 18) ECRI recommends that the authorities break down further the data on incidents relating to Article 282 into the different hate motives. They should also collect and publish data on the application of Article 63 of the Criminal Code.
6. (§ 37) ECRI recommends that a dedicated website for the Federal Agency for Nationality Affairs is established and information about its mandate and activities published. This website could also include a tool for reporting hate crime, including hate speech.
7. (§ 40) ECRI recommends the adoption of a code of ethics for both chambers of the Russian Parliament, prohibiting and sanctioning racist and homo/transphobic hate speech.
8. (§ 42) ECRI recommends that the authorities encourage speedy reactions by public figures, and in particular politicians and religious leaders, to hate speech that not only condemn it but which also seek to reinforce the values that it threatens.
9. (§ 52) ECRI strongly recommends that the authorities amend the anti-extremism legislation and its application in light of the concerns raised above (§§44-51). They should also ensure that the various responses to offences of extremism, including hate speech, are not used to suppress legitimate criticism of official policies, political opposition or religious beliefs, in line with ECRI's General Policy Recommendation No. 15 on combating hate speech.
10. (§ 62) ECRI recommends that the authorities look into youth engagement in serious hate-motivated violence and take steps to prevent this phenomenon, such as by developing teaching materials to combat youth extremism.
11. (§ 64) ECRI recommends that the authorities facilitate cooperation between LGBT communities and the police and establish regular dialogue with a view to improving reporting and preventing and combating homo/transphobic violence.
12. (§ 75) ECRI recommends that the authorities carry out an evaluation of the impact of their Roma-related activities, in particular the national Action Plans for Roma, with a view to ensuring concrete actions and progress being delivered on an appropriate and sufficiently large scale, reflecting the size and diversity of the Roma community in the country and the problems its members face.

13. (§ 77) ECRI recommends that the Russian authorities ensure that Roma children are fully integrated into regular educational establishments and that no separate “Roma classes” are set up. Furthermore, the authorities should thoroughly investigate allegations of segregation of Roma pupils in schools, take strong action in case of any evidence found for such acts and remind all school principals that racial segregation is prohibited under Russian law.
14. (§ 82) ECRI recommends that the authorities strengthen the integration of refugees and beneficiaries of temporary asylum by (i) applying best practices and successful integration measures that have been made available to those who fled the armed conflict in Eastern Ukraine in recent years also to persons from other countries of origin; (ii) providing free-of-charge access to Russian-language courses; and (iii) granting an entitlement to social welfare payments to those who are unemployed and without sufficient financial means.
15. (§ 86) ECRI recommends that the authorities include the function of a complaints mechanism for migrant workers in the mandate of the Federal Agency for Nationality Affairs, seeking guidance from its revised General Policy Recommendation No. 2.
16. (§ 97) ECRI strongly reiterates its recommendation that the authorities set up a body independent of the police and prosecution authorities competent to investigate all complaints against the police, as per §10 of its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.
17. (§ 100) ECRI strongly recommends amendment of the Law on Non-Commercial Organisations, in particular to abandon the term “foreign agent”, clearly define “political activities”, remove the power to register organisations without their consent, review the obligations of non-commercial organisations and apply legal sanctions only in case of serious wrongdoing.
18. (§ 105) ECRI strongly recommends that the Russian Federation authorities reconsider their position and take steps to reverse the ban on Jehovah’s Witnesses, as well as abandon all related measures involving their children.
19. (§ 111) ECRI recommends that the authorities amend all existing legislation in order to include explicitly the grounds of sexual orientation and gender identity in the list of protected grounds, in particular in Articles 282, 136 and 63 of the Criminal Code, as well as in Article 3 of the Labour Code and Article 5 of the Law on the Fundamentals of Health Care of Citizens in the Russian Federation.
20. (§ 115) ECRI recommends, as a matter of priority, that the Russian authorities abolish the legal ban on the provision of information about homosexuality to minors (legislation on the so-called “promotion of non-traditional sexual relations among minors”), in line with the judgment of the European Court of Human Rights in the case *Bayev and others v. Russia*.
21. (§ 117) ECRI recommends that the authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live.
22. (§ 120) ECRI recommends that the Russian authorities fully implement the judgment of the European Court of Human Rights in the case of *Alekseyev v. Russia* and ensure that LGBT persons’ right to freedom of assembly is respected.
23. (§ 124) ECRI recommends that the authorities carry out an in-depth study on the areas and levels of discrimination faced by LGBT persons in Russian society. Furthermore, the authorities should promote and facilitate public LGBT awareness-raising and tolerance campaigns, including in schools.

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