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ECRI REPORT ON ROMANIA

(fourth monitoring cycle)

Adopted on 19 March 2014

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FOREWORD

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

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

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (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 report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 5 December 2013 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

SUMMARY

Since the publication of ECRI's report on Romania on 21 February 2006, progress has been made in a number of fields covered by that report.

The Law on Religious Freedom and the General Regime of Denominations entered into force in 2007 and an advisory Council of the Churches and Religious Denominations was set up in order to prevent conflicts between the different religions.

Racist motivation is now an aggravating circumstance for all criminal offences provided under the Criminal Code and the principle of the sharing of the burden of proof before the courts and the National Council for Combating Discrimination has now been introduced by law.

The categories of complainants who can seize the People's Advocate have been broadened encompassing companies, associations and other legal entities. This has resulted in an increase in the number of hearings granted by the People's Advocate.

Positive measures have been taken by the authorities in order to strengthen the fight against prejudice, particularly against the Roma. The employment of Roma mediators at school and in the field of health has brought results. In addition, education-support programmes have been launched with a view to assisting pupils who are socio-economically disadvantaged, including the Roma.

The Law on Asylum now explicitly provides for a number of safeguards, notably: providing for specific guarantees applicable to unaccompanied minors seeking asylum. As a result, the law now provides for family reunification of unaccompanied minors in accordance with the best interest of the child.

The authorities have carried out campaigns targeted at recruiting members of national/ethnic minorities in the police force and a number of places within the various police academies in the country have been earmarked for this purpose. As a result, the number of officers belonging to a national/ethnic minority has increased.

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

Difficulties persist, despite a new law, for various religious communities in order to obtain official recognition as a religious denomination or for registering as a religious association.

The law on the status of national minorities has not yet been adopted. Moreover, the 5% threshold set for the eligibility of candidates in local elections can hinder the ability of national/ethnic minorities to elect their representatives under the same conditions as the majority.

Public insults and defamation on racial discrimination grounds are not prohibited under the law.

There is no single institution mandated with the systematic collection of data on the breach of criminal law provisions against racism and the fragmented information available indicates a weak application by the judiciary of the criminal law provisions against racism.

Little progress has been made to provide the National Council for Combating Discrimination with sufficient funds in order to carry out its work effectively and to ensure that its investigation and litigation capacity are strengthened.

Stigmatising statements against Roma are common in the political discourse, encounter little criticism and are echoed by the press, the audiovisual media and on the Internet. No effective mechanism is in place to sanction politicians and political parties which promote racism and discrimination.

Significant hurdles hinder the implementation of strategies for Roma integration, such as the poor allocation of funds from the national budget and the ineffective coordination between the ministries. Furthermore, the impact of these strategies has never been evaluated. School segregation and discrimination towards Roma pupil remain a serious reason for concern. A significant number of Roma lack identification documents or birth certificates.

No significant steps have been taken to ensure compliance with the principle of non-discrimination by the police or to enquire as to the reasons why no complaints have been lodged against police officers.

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

The requirements which religious associations need to meet in order to be recognised as a religious denomination and those which need to be met by religious groups in order to be recognised as religious associations should be eased.

The Criminal Code should be amended in order to ensure that public insults and defamation against a person or a grouping of persons on the grounds of their "race", colour, language, religion, citizenship or national/ethnic origin be prohibited.

The authorities should conduct campaigns informing the general public about the criminal law provisions concerning the fight against racism as well as the instances before which they can turn to in order to obtain assistance and redress*.

The authorities should devise a comprehensive data-collection system on the application of criminal law provisions against racism and racial discrimination*.

Sufficient funds need to be provided to the National Council for Combating Discrimination in order to secure suitable premises; increase the staff of the legal department; and improve document management.

The legislation prohibiting incitement to hatred should be applied to all politicians who make racist statements and there should be legal provisions on the obligation to suppress public financing of organisations, including political parties, which promote racism and discrimination.

The authorities should ensure that sufficient funds are allocated, a strong impetus is given to the Strategy on the Inclusion of the Roma Minority and all obstacles to its implementation be removed*.

An independent mechanism for dealing with complaints against the police should be set up. This mechanism would deal, inter alia, with issues of racial discrimination.

* The recommendations in this paragraph 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. Existence and Application of Legal Provisions

International legal instruments

1. In its third report ECRI recommended that Romania ratify the following conventions: (a) the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems; (b) Protocol No. 12 to the European Convention on Human Rights (ECHR); (c) the European Convention on the Legal Status of Migrant Workers; (d) the European Convention on the Participation of Foreigners in Public Life at Local Level; (e) the European Charter for Regional or Minority Languages; and (f) the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

2. ECRI is very pleased to note that Romania ratified Protocol No.12 to the ECHR on 17 July 2006 and the European Charter for Regional or Minority Languages on 29 January 2008, which entered into force, respectively, on 1 November 2006 and on 1 May 2008.

3. ECRI notes that Romania ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, on 16 July 2009 with entry into force on 1 November 2009. It regrets, however, that Romania reserved "the right not to apply the provisions of Article 5 paragraph 1 of the Protocol, concerning insults made through a computer system on racist and xenophobic grounds"[1]. The authorities have explained that the reservation cannot be withdrawn as long as slander and defamation are not criminal offences under national law. These arguments are addressed by ECRI in the subsection on Criminal law provisions.

4. As concerns the European Convention on the Legal Status of Migrant Workers, ECRI in its fourth monitoring cycle has decided to focus on the ratification of a more limited number of instruments than in the third round. There have been no changes concerning the European Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

5. ECRI recommends that the Romanian authorities withdraw the reservation to Article 5 paragraph 1 of the Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. It recommends once again that the authorities sign and ratify the European Convention on the Participation of Foreigners in Public Life at Local Level and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

[1] Article 5 § 1of the Protocol stipulates that "Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics".

Constitutional and other fundamental provisions

6. In its third report, ECRI recommended that the Romanian authorities include in the Constitution a provision for the restriction of freedom of expression, assembly and association with a view to combating racism[2], as per its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination[3].

7. ECRI has been informed by the authorities that the Constitution is in the process of being revised and that amendments reinforcing the protection against discrimination may be introduced. At the same time, they have stressed that Romania's Constitution already enshrines the principles of non-discrimination and equality of rights (Articles 4 and 16) and provides for the restriction of a number of rights and freedoms under certain circumstances (Article 53[4]). ECRI considers that a clearer signal is needed; the Constitution should, therefore, provide that the exercise of freedom of expression, assembly and association may be restricted with a view to combating racism, in conformity with the ECHR and in line with GPR No. 7.

8. ECRI reiterates its recommendation that the Romanian authorities include in the Constitution a provision for the restriction of freedom of expression, assembly and association with a view to combating racism, as per its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

Legislation on religious denominations

9. In its third report, ECRI recommended that the Romanian authorities adopt the law on religious cults without delay and that they ensure full consultation of all religions and religious associations on the subject. It also recommended that they safeguard the principle of equality between all religious denominations in accordance with the Constitution, in particular, by ensuring compliance with the principle of the separation of the Church and the State. It further recommended that the Romanian authorities apply the provisions governing religious cults and religious associations in a transparent and equitable manner, ensuring that the decision on whether to award the status of religious denomination to a religious association is taken in the light of all the relevant factors and without interference by any third party.

10. ECRI welcomes the adoption of Law No. 489/2006 on Religious Freedom and the General Regime of Denominations, which entered into force in January 2007 following consultations with a number of stakeholders. The law provides for a three-tier system which distinguishes between: religious groups that are not legal entities, religious associations and religious denominations. The status of religious denomination (the highest status) is granted by government decision,

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[2] According to General Policy Recommendation (GPR) No. 7, racism is 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.

[3] According to GPR No. 7, racial discrimination is 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.

[4] In particular, Article 53 provides that (1) The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defence of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe. (2) Such restriction shall only be ordered if necessary in a democratic society (…).

following a proposal submitted by the Ministry of Culture and Religious Affairs[5]. Under the new law, 18 religious denominations have been recognised[6] and are therefore eligible to receive state support, commensurate to the size of the corresponding community. They may also, inter alia, establish schools, teach religion in public schools where they have a sufficient number of pupils, receive government funds to build places of worship, pay to the extent possible salaries of clergy with state funds and enjoy tax exempt status. The law also provides tax breaks for the religious activities of religious associations.

11. ECRI notes, nonetheless, that international organisations, civil society and religious communities have raised concerns in relation to this law, in particular as concerns: the difficulties which various religious communities encountered in order to obtain official recognition as a religious denomination; the restrictive conditions imposed for registering as a religious association (a higher number of members is required than for other associations); and the provision prohibiting "religious defamation" and "public offence against religious symbols". As concerns the application of the law, ECRI has been informed that local authorities sometimes interpret in an inconsistent manner the loosely drafted provisions on tax breaks, especially with respect to real estate[7].

12. ECRI recommends that the authorities amend the Law on Religious Freedom and the General Regime of Denominations by: easing the requirements which religious associations need to meet in order to be recognised as a religious denomination, as well as those which need to be met by religious groups in order to be recognised as religious associations; abrogating the prohibition of religious defamation as well as the provision on public offence against religious symbols; and ensuring that there are no legal gaps which render the application of tax breaks for religious associations discretionary.

Legislation on national minorities

13. In its third report, ECRI recommended that the Romanian authorities adopt the draft law on the status of national minorities without delay. It urged them to amend any provisions of this law which might infringe the right of national/ethnic minorities to choose their political representatives at the local level.

14. ECRI is concerned that the law on the status of national minorities has not yet been adopted.[8] After having been rejected by the Senate in 2005, an amended version of the draft law has been pending before the Chamber of Deputies. While many amendments have been proposed and discussed since ECRI's third report, the content of the draft law continues to cover the same issues described therein (see paragraphs 23 and 24).

15. As the draft law enshrines the principles of non-discrimination and equality of rights, ECRI considers that its adoption would in principle be a welcome step towards the protection of national/ethnic minorities from racial discrimination. Having stated that, ECRI notes that it also sets conditions which need to be met by national/ethnic minority organisations in order to be able to represent their

[5] In order to be recognised as a religious denomination, religious associations must comply with criteria related to sustainability, stability and public interest: they must be legally established, produce proof that they have functioned for at least 12 years in Romania, as well as evidence establishing that their followers amount to at least 0.1% of Romania's population

[6] Before 2007, only seven religious denominations were recognised.

[7] See also in this respect, Opinion on Law No. 489/2006 (CDL-AD(2005)037), Venice Commission.

[8] See also Issues of Concern in Resolution CM/ResCMN(2013)7 on the implementation of the Framework Convention for the Protection of National Minorities by Romania.

communities at national level – along the same lines as in its previous version[9]. As it is indicated in paragraphs 23 and 24 of ECRI's third report, these conditions impinge on the right of members of national minorities to choose their representatives, putting them at a disadvantage in relation to members of the majority, who are free to choose their political leaders at all levels.

16. ECRI reiterates its recommendation that the Romanian authorities adopt the draft law on the status of national minorities without delay and amend any provisions of this law which might impinge on the right of members of national/ethnic minorities to choose their political representatives.

Regulations concerning restitution of property to religious and national/ethnic minorities

17. In its third report, ECRI urged the Romanian authorities to ensure that the legislation on property confiscated during the communist period is applied fairly and that they establish a procedure clearly regulating each party's rights and responsibilities.

18. The legislation governing restitution of "religious property" and "property previously owned by national minorities"[10] was amended in 2005 in order to expedite the restitution process and simplify the relevant procedures. According to the third opinion on Romania of the Advisory Committee on the Framework Convention for the Protection of National Minorities[11], several measures have been taken to speed up the rate of restitution, including the imposition of fines on officials who have hindered the process. The law has also established a specific compensation fund for applicants whose claims could not be satisfied in other ways. ECRI has been informed by the National Authority for Restitution that further to new amendments presented to the Parliament in 2013, the ownership of contested forestland and assets will be transferred from the central to the local authorities, which will now be responsible for the restitution process. The authorities have stressed that this way the local authorities will be held accountable, in the upcoming elections of 2016, for the work they have carried out in this field. Furthermore, after this date, if the results are deemed insufficient, the land as well as the responsibility concerning restitution will return to the State. The current law mainly provides for restitution in kind; however, the bill presented to Parliament in 2013 provides that if restitution in kind is not possible, the claimant will receive points in proportion to the value of the property and these may be used to buy back the land during public auctions or can be cashed in.

19. ECRI welcomes the efforts made to speed up the restitution process. It notes that while there has been some progress in this field, the pace of restitution has been extremely slow and a considerable number[12] of religious property restitution cases have remained unsolved[13]. ECRI has been informed by its interlocutors that local authorities have in many cases obstructed the restitution of property, by: not providing information relating to the disputed property; refusing to return certain properties; and challenging before court the decisions of the Special Restitution Commission, the section within the National Authority for Property

[9] As concerns representation at the local level, please see the section on the Existence and Application of Legal provisions, subsection Electoral law.

[10] Respectively, Law No. 501/2002 and Law No. 66/2004.

[11] See the Third Opinion on Romania of the Advisory Committee on the Framework Convention for the Protection of National Minorities ACFC/OP/III(2012)001, 5 October 2012.

[12] For example out of 2 522 restitution requests submitted by Hungarian-minority religious institutions, 1103 remain pending.

[13] In this connection, see the Chamber judgment of the European Court of Human Rights (ECtHR), Alba Iulia v. Romania, no. 33003/03, 25 December 2012.

Restitution responsible for returning religious and national/ethnic communal property. For these reasons, ECRI is not convinced that the proposed amendments transferring responsibility in respect of property restitution from the national to the local authorities is the best solution. On the contrary, a strong impulse and coordination should be ensured at the central level, given all the more that the properties at issue were expropriated by the State. ECRI is therefore pleased to know that in November 2013 an inter-ministerial Committee was established to facilitate the co-ordination of the different authorities involved in the process of property restitution.

20. As regards in particular the return of communal real estate belonging to national/ethnic minorities, between 2006 and May 2011, out of a total of 2000 claims, 568 were processed. The Romanian authorities have indicated that there are few claims with a positive outcome because, quite often, the claimants fail to submit supporting documents. More specifically, the capacity of the registry of real property to trace back the ownership of property is limited, so it is difficult to provide proof as concerns ownership[14].

21. ECRI recommends that the Romanian authorities give a strong impulse to the resolution of the claims related to the restitution of property to religious and national/ethnic minorities and that coordination of this process is ensured at the central level under the current decentralisation framework.

22. In its third report, ECRI recommended that the Romanian authorities enforce the law governing property restitution and encourage religious denominations, particularly the Orthodox Church and other religious minorities, to initiate a constructive dialogue on this point. It also recommended that the authorities introduce mediation arrangements, hold inter-religious colloquies and seminars and conduct information campaigns to promote the idea of a multidenominational society.

23. The authorities have confirmed that property disputes between the Orthodox Church and the Greek Catholic Church have led to tensions between the two confessions[15]. On a general note, the Orthodox Church has been slow in returning Greek Catholic churches received in 1948 by the State and has often refused to do so.

24. A joint commission, composed of representatives of the clergy of the two churches, has been in place since 1999 in order to resolve these property disputes; the work of this commission, however, does not seem to have yielded significant results. The National Authority for Property Restitution has informed ECRI that since 2005, out of 6 723 restitution claims, 1 110 have been processed. The State Secretariat for Religious Denominations has also informed ECRI that, in the same time frame, through its efforts of mediation, a cathedral and a church have been returned to the Greek Catholic Church. The authorities have also highlighted that meetings have been organised with the participation of the State Secretariat for Religious Denominations in order to resume the dialogue between the two churches and with a view to finding appropriate solutions. An

[14] For example, a very controversial case, which is the object of an ongoing trial, is that of the Szekely Miko high school. This property had been returned to the Reformed Church but has been re-transferred to the State further to a judgment of a first instance criminal court, which found, inter alia, that the restitution had taken place on the basis of invalid documents.

[15] In 1948, through Decree No. 358/1948 the Romanian State confiscated the property of the Greek Catholic Church and transferred it to the Orthodox Church. In 1989, the Romanian State abrogated Decree No. 358/1948 and passed Decree Law No. 126/1990 on Certain Measures Regarding the Romanian Church United with Rome (Greek Catholic) which provides for a Greek Catholic-Orthodox commission to decide on the situation of the confiscated worship places "taking into account the desires of the believers from the communities which own these goods".

advisory Council of the Churches and Religious Denominations was also set up in April 2011 in order to promote solidarity and cooperation and prevent conflicts between the different religions in Romania; it meets up to twice a year. ECRI welcomes the above-mentioned efforts and encourages the authorities to take a leading role in resolving these disputes, which, again, relate to property confiscated by the State.

25. ECRI recommends that the authorities take a leading role in resolving the property disputes between the Orthodox and Greek Catholic Church.

Electoral law

26. In its second and third reports, ECRI criticised the 5% threshold set for the eligibility of candidates in local elections. In its third report, ECRI also urged the Romanian authorities to amend Article 7 of Law No. 67/2004[16] on Local Elections to enable national/ethnic minorities to elect their representatives at the local level under the same conditions as the majority.

27. ECRI notes that the 5% threshold for eligibility of counsellors in local elections has not been altered and Article 7 of the Law on Local Elections has not been amended. It is true that the authorities have indicated that Article 7 of the Law on Local Elections has not hindered organisations of national/ethnic minorities from participating in local elections: for instance one Hungarian party and three Roma organisations other than those represented in Parliament participated in the 2008 local elections; in 2012, one Roma organisation, other than the Roma party represented in Parliament, participated in the local elections. However, ECRI considers that the analysis in paragraph 41 of its third report is still valid.

28. ECRI recommends that the Romanian authorities ensure that the law on local elections is amended to enable national/ethnic minorities to elect their representatives at the local level under the same conditions as the majority.

Criminal law provisions

29. In its third report ECRI again recommended that the Romanian authorities ensure that for sentencing purposes racist motivation is regarded as an aggravating circumstance, as indicated in paragraph 21 of its General Policy Recommendation (GPR) No. 7. It also recommended that the authorities introduce into the new Criminal Code provisions defining ordinary offences with a racist motive as racist offences.

30. Since ECRI's last report, the Criminal Code has been amended a number of times and a new one (Law No. 286/2009) is expected to enter into force in 2014[17]. ECRI is pleased to note that further to the above-mentioned amendments, racist motivation is now an aggravating circumstance for all criminal offences provided under the Criminal Code[18]. The 2006 amendments also have expanded the scope of two criminal offences which were already provided for under the Criminal Code: abuse in the exercise of power by a civil

[16] Article 7 § 2 of this law considers as national minority organisations only those who are already represented in Parliament. Article 7 § 3 provides that "Candidatures may also be put forward by other legally established organisations of citizens belonging to national minorities, which submit a list of members to the Central Electoral Bureau. The number of members may not be less than 15% of the total number of citizens who stated in the latest census that they belonged to the minority concerned (…)".

[17] ECRI has been informed that the new Criminal Code will not affect the substance of the criminal law provisions against racism and racial discrimination.

[18] More specifically, under Article 75 (c)1 of the Criminal Code, "committing a criminal offence on grounds of race, nationality, ethnicity, language, religion (….) is considered an aggravating circumstance of a crime."

servant (Article 247 of the Criminal Code)[19] and incitement to hatred (Article 317 of the Criminal Code)[20]. In addition to the above, the following acts are also considered offences: the act of genocide (Article 357 of the Criminal Code); the setting up of a fascist, racist or xenophobic organisation as well as any form of support for and membership of this type of organisation (Article 3 of Government Emergency Ordinance (GEO)[21] No. 31/2002[22]); the distribution or sale, by any means, or the production or public use of fascist, racist or xenophobic symbols (Article 4 of GEO No. 31/2002); promoting the cult of persons who have committed criminal offences against peace and humanity or who have promoted fascist, racist or xenophobic ideas by using propaganda (Article 5 of GEO No. 31/2002); denying, contesting, approving or justifying, through any means, in public, the Holocaust, genocides or crimes against humanity or the effects thereof (Article 6 of GEO No. 31/2002). Further to amendments to GEO No. 31/2002 (with entry into force in 2012), on the one hand, the maximum penalty provided for certain offences has been decreased[23]; in this respect, ECRI expresses concern that the deterrent effect of the corresponding criminal law provisions might be compromised. On the other hand, using a computer system to threaten a person or a group of persons on grounds of race, colour, descent, national or ethnic origin or religion[24] and the distribution through a computer system of racist or xenophobic materials are now punishable with imprisonment under GEO No. 31/2002, as amended.

31. ECRI recommends that the Romanian authorities ensure that the criminal law provisions against racism have real deterrent effect, and to this end, that the maximum penalties provided by law for these offences are not lowered.

32. While Romania is to be commended for having a comprehensive criminal legal framework in the field of racism, ECRI notes that public insults and defamation against a person or a grouping of persons on the grounds of their "race", colour, language, religion, citizenship or national/ethnic origin are not prohibited under the criminal law, contrary to what it recommends in its GPR No. 7 paragraph 18 (b). The Romanian authorities have informed ECRI that the above-mentioned acts cannot be criminalised given the fact that insults and defamation are not considered offences under the Criminal Code.[25] ECRI stresses, however, that the high incidence of hate speech in the traditional media, as well as on the Internet[26] calls for an adequate criminal response, in addition to the avenues of redress provided by the Anti-discrimination and Audiovisual Laws. In ECRI's view the lack of the above-mentioned provisions represents a legal gap which could be easily remedied by limiting the prohibition of insults and defamation only to those cases which are related to racism and racial discrimination.

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[19] Under Article 247 of the Criminal Code, "the act, committed by a civil servant of restricting the use or exercise of the rights of any citizen or of creating for citizens situations of inferiority on grounds of race, nationality, ethnicity, language, religion (…) shall be punished by imprisonment from 6 months to 5 years."

[20] Under Article 317 of the Criminal Code "inciting hatred on grounds of race, nationality, ethnicity, language, religion (…), shall be punished by imprisonment from 6 months to 3 years or fine."

[21] A Government Emergency Ordinance has the same force as primary legislation, but it requires the approval a posteriori by the Parliament.

[22] Prohibiting the organisations and symbols with fascist, racist and xenophobic character and the glorification of those found guilty of crimes against peace and humanity.

[23] In particular those relating to the organisation or establishment of a fascist, racist or xenophobic organisation or the accession to or support in any way of such a group; and the denial, contesting, approving, justifying or minimising in public, the Holocaust, genocide, crimes against humanity.

[24] The offence however must be punishable with a maximum penalty of at least 5 years of imprisonment.

[25] However, insult is punished as an administrative offence by Article 3 of Law no 61/1991.

[26] See the section on Climate of Opinion and Racism in Public Discourse, subsection Media and the Internet.

33. ECRI recommends that the Romanian authorities ensure that public insults and defamation against a person or a grouping of persons on the grounds of their race, colour, language, religion, citizenship or national/ethnic origin be prohibited under the Criminal Code, as per ECRI's General Policy Recommendation No. 7 paragraph 18 (b).

34. In its third report, ECRI urged the Romanian authorities to ensure that the provisions of the Criminal Code governing racist offences are fully applied. ECRI, in particular, recommended that GEO No. 31/2002 be enforced more forcefully to any organisations or political parties advocating racist ideologies. It also recommended that the authorities: continue to provide training courses on these provisions to all the state agencies concerned, and in particular to the judiciary and the police; and conduct campaigns in co-operation with NGOs and civil society to inform the general public about these provisions.

35. ECRI notes that in 2013, further to an announcement made on the Internet by an extremist group based in Timisoara, inciting Roma women to undergo medical sterilisation, the prosecutor's office opened an investigation ex officio in relation to the promotion of fascist and racist ideology. Nonetheless, ECRI regrets that the provisions of the Criminal Code as well as those of GEO No. 31/2002 regarding racist offences are still weakly applied. The data provided by the Romanian authorities[27] shows that between 2007 and 2012 the Prosecutor's Office attached to the High Court of Cassation referred only two cases to court under the provisions of GEO No. 31/2002. In the same time frame, no cases were referred to court by the same authority under Article 317 of the Criminal Code (incitement to hatred). The public prosecutor has also informed ECRI that since ECRI's third report, there have been two convictions in the last instance under GEO No. 31/2002; both cases were related to the spray painting and drawing of symbols of a fascist, racist and xenophobic character. The Ministry of Justice has also informed ECRI that five convictions for abuse in the exercise of power by a civil servant were handed down in 2012 and four convictions for incitement to hatred were handed down in the same year. ECRI notes that these figures are very low, as these statistics do not seem to be consistent with the information gathered and reflected in various sections of this report[28]. For instance, an organisation considered to be fascist, Noua Dreapta (the New Right), commemorates each year leaders of the legionary movement[29], promotes their ideas and makes hateful statements against Roma and homosexuals. Reports have also highlighted that other extremist organisations have held high-profile public events of an antisemitic nature commemorating leaders of the legionary movement[30]. On more than one occasion, the Holocaust has been denied in public by eminent figures[31]. Furthermore, in the course of ECRI's visit, a picture of Adolph Hitler had been displayed in public outside the university, in the centre of Bucharest. No investigation was opened in relation to the above incidents.

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[27] See also below concerning the systematic collection of data concerning criminal law provisions against racism and racial discrimination.

[28] See the section on Climate of Opinion and Racism in Public Discourse, subsections Media and the Internet and the section on Vulnerable/Target Groups, subsection Jewish community.

[29] In 1927 Corneliu Zelea Codreanu founded the Legion of the Archangel Michael, which later became known as the Legion or Legionary Movement; it was committed to the "Christian and racial" renovation of Romania and fed on antisemitism and nationalism. In 1930 C.Z. Codreanu founded the Iron Guard, a military wing of the Legionary Movement; its name, later on, was commonly used to refer to the Legionary Movement in general.

[30] These events took place in 2011 in Bucharest and Piatra Neamt; posters with former Legionary leader Corneliu Zelea Codreanu appeared in the streets.

[31] See the section on Vulnerable/Target Groups, subsection Jewish community.

36. ECRI reiterates its recommendation that the authorities ensure that the criminal law provisions against racism are applied more forcefully so that they are not voided of their meaning.

37. As concerns the training of judges and prosecutors on the above-mentioned provisions, ECRI has been informed that the National Institute of Magistracy (NIM) provides initial training on racist motivation as an aggravating circumstance and on the abuse in the exercise of power by a civil servant. In addition to the above provisions, incitement to hatred and genocide were touched upon in the context of the project Equal Access to Justice for Roma, organised by NIM and the NGO Romani CRISS. However, as will be discussed in the subsection on Civil and administrative law, the regular training provided by NIM mainly focuses on the cases brought before the National Council for Combating Discrimination (NCCD), as well as the case-law of the European Court of Human Rights (ECtHR) concerning Article 14 of the ECHR and the European Union directives prohibiting discrimination; these are mainly of a civil nature. ECRI deems that an equal amount of attention should be paid to the overall criminal legal framework aimed at fighting racism. As concerns the training of law-enforcement officials, the authorities have informed ECRI that between 2006 and 2012, 936 police officers have been trained by order of the Ministry of Internal Affairs on human rights, including on the prevention and the fight of all forms of discrimination; further training is provided to those officers who often are in contact with persons belonging to vulnerable groups. ECRI has also been informed that one research institute of the police[32] developed in 2012 study material to be used for the continuous training of police officers on preventing all forms of discrimination. Furthermore, in 2011 the Romanian version of the OSCE manual on police, Roma and Sinti People: best practices in strengthening trust and understanding was launched. ECRI considers that the weak application of the criminal law provisions against racism may also be attributed to the absence of awareness-raising campaigns to inform the general public about them.

38. ECRI strongly recommends that the Romanian authorities conduct campaigns informing the general public about the criminal law provisions concerning the fight against racism. It also recommends that information is provided to victims on the bodies which are competent to provide assistance and/or redress.

39. ECRI recommends that the Romanian authorities ensure that specific training be provided to judges, prosecutors and law-enforcement officials on the criminal legal framework aimed at fighting racism.

40. No information has been provided as concerns the application of racist motivation as an aggravating factor, nor about the application of each criminal law provision against racism, broken down by the number of: opened investigations, cases referred to court, discontinued pre-trial investigations and convictions or acquittals per reference year. The authorities have acknowledged that there is no single institution mandated with the systematic collection of data on the breach of criminal law provisions against racism and that the information is therefore fragmented[33]. They have also informed ECRI that there have been discussions on how to improve the situation. ECRI encourages the authorities in this direction as this information, if clearly broken down, is a useful tool in assessing the effectiveness of criminal law provisions against racism.

[32] The Institute of Prevention and Psychology.

[33] See in this connection also the Fundamental Rights Agency's (FRA) 2011 annual report: Fundamental rights: challenges and achievements in 2011, p. 157, stating that official data on racist crime continues not to be recorded or published in Romania.

41. ECRI recommends that the authorities devise a comprehensive data-collection system on the application of criminal law provisions against racism and racial discrimination. Such a system should record the number of investigations opened by the police, the cases referred to the prosecutor, the number of cases pending before the courts and their final decisions, broken down per reference year and per criminal law provision.

Civil and administrative law provisions

42. In its third report, ECRI recommended that the Romanian authorities adopt a provision enabling the burden of proof to be shared between a victim of discrimination and the respondent before the courts or any other authority.

43. ECRI is pleased to note that the principle of the sharing of the burden of proof before the courts and the National Council for Combating Discrimination (NCCD) has been introduced in Government Ordinance No. 137/2000 (the Anti-discrimination Law), as of 14 July 2006[34]. This principle has been further strengthened in a law, which entered into force in March 2013, providing that a complainant "will have to present facts", instead of proof, "from which it may be presumed that there has been direct or indirect discrimination and it shall be for the respondent to prove that the facts does not constitute discrimination". ECRI notes however that the Anti-discrimination Law does not contain provisions on discrimination by association, announced intention to discriminate, and inciting and aiding another to discriminate, contrary to what it recommends in paragraph III.6 of GPR No. 7.

44. ECRI recommends that the Romanian authorities prohibit discrimination by association, announced intention to discriminate, and inciting and aiding another to discriminate as per its General Policy Recommendation No. 7.

45. As concerns the ability of organisations such as associations, trade unions and other legal entities which have a legitimate interest in combating racism and racial discrimination to bring civil cases, intervene in administrative cases or make criminal complaints, this is possible only in the field of employment[35].

46. ECRI recommends that organisations such as associations, trade unions and other legal entities which have a legitimate interest in combating racism and racial discrimination are entitled to bring civil cases, intervene in administrative cases or make criminal complaints even in all fields of life as per its General Policy Recommendation No. 7.

47. In its third report, ECRI strongly recommended that the Romanian authorities ensure that the Anti-discrimination Law is fully applied. In this respect, it recommended that they take the necessary steps to train judges, magistrates, lawyers and law-enforcement officials throughout the country so that they may improve their knowledge of this law and apply it more fully. ECRI also recommended that the authorities conduct information campaigns throughout the country so that victims of discrimination may benefit from the Anti-discrimination Law and from the powers of the NCCD.

48. NIM provides initial training to future judges and prosecutors on: the Anti-discrimination Act, the case-law of the NCCD, the EU directives on fighting discrimination, as well as the case-law of the European Court of Human Rights

[34] Under Article 20 § 6, the complainant «has the obligation to prove the existence of facts from which it may be presumed that there has been direct or indirect discrimination and it shall be for the respondent to prove that the facts do not constitute discrimination".

[35] See the section on Discrimination in Various Fields, subsection Employment.

(ECtHR) on Article 14 of the ECHR. As regards information campaigns aimed at improving the awareness of the public of the Anti-discrimination Law and the NCCD, ECRI's attention has been raised to the campaign Say No to Discrimination, carried out in 2010 in cooperation with the Council of Europe[36]. In this connection, ECRI notes that the statistics on the number of complaints filed with the NCCD under the Anti-discrimination Law show a moderate, but steady increase.[37] The authorities have also brought to ECRI's attention a number of judgments issued in the last instance by civil courts in which the Anti-discrimination Law was applied. While this data is encouraging, ECRI considers that more energy needs to be spent in order to: inform the public about anti-discrimination legislation and the avenues of redress (other than the NCCD); and to sensitise judges, particularly first instance ones, on the importance of anti-discrimination legislation. As concerns more in particular the systematic collection of data on the application of civil and administrative legislation aimed at combating discrimination, the authorities have acknowledged that there is no single institution mandated with this task.

49. ECRI recommends that the Romanian authorities strengthen the training of judges, prosecutors, lawyers and law-enforcement officials throughout the country so that they improve their knowledge of anti-discrimination legislation and apply it more fully. Specific focus should be given to the case-law of civil courts. ECRI also reiterates its recommendation that the authorities conduct information campaigns on the Anti-discrimination Law, the powers of the National Council Against Discrimination and the possibility to loge complaints before courts.

50. ECRI recommends that the authorities monitor the application of anti-discrimination provisions in the field of civil and administrative law and collect data to this effect.

Legal aid

51. In its third report, ECRI recommended that the Romanian authorities adopt a simplified legal aid procedure to enable victims of discrimination to gain access to the courts. It recommended in this regard that they modify and clarify the requirements for obtaining legal aid so that victims of discrimination may assert their rights before the courts. It also recommended that the authorities ensure that indigent victims can automatically have access to an assigned counsel.

52. ECRI has been informed by the authorities that the system of free legal aid was amended in 2008 and, more recently, in 2011. According to the authorities, the threshold required to benefit from free legal aid in civil proceedings has been lowered. Civil society, on the other hand, has highlighted that these requirements are now more stringent and that many poor people do not qualify. Furthermore, under GEO No. 51/2008, only Romanian and EU citizens living in Romania or in other EU Member States who have a civil case pending before a Romanian court and have insufficient revenues for legal assistance and/or representation can benefit from free legal aid. The authorities have informed ECRI that for all other persons formal reciprocity with the country of origin of the petitioner is required to benefit from free legal assistance in the civil and administrative instances. This, in

[36] See the Section on Existence and Application of Legal Provisions, subsection Anti-discrimination bodies and other institutions.

[37] For instance, between 2005 and 2010, the complaints lodged on grounds of language have respectively been: 2, 2, 7, 11, 13 and 16 (against 0, 2 and 1 between 2002 and 2004). The complaints lodged on grounds of religion in the same time frame have been: 11, 8, 12, 15, 6 and 6 (against 2, 9 and 9 between 2002 and 2004); whereas on grounds of nationality these have been: 39, 20, 39, 54, 28 and 42 (against 1, 12 and 21 between 2002 and 2004); on grounds of ethnic origin: 85, 69, 82, 62, 62, 54 (against 34, 66 and 45 between 2002 and 2004); and race: 1, 2, 0, 0, 2 and 1 (against 0, 0 and 1 between 2002 and 2004).

ECRI's view, amounts to discrimination on grounds of citizenship in the field of access to justice.

53. ECRI recommends that the threshold for benefiting from free legal aid under the law, as well as the procedure in place be such that the right of access to court is effectively respected. It further recommends that the authorities amend the legislation so that all victims of racial discrimination who have insufficient revenues for legal assistance and/or representation are entitled to free legal aid, regardless of their citizenship.

Anti-discrimination bodies and other institutions

- *National Council for Combating Discrimination (NCCD)*[38]

54. In its third report, ECRI recommended that the Romanian authorities, when drafting the new law on the status of the NCCD, draw on its GPR No. 2 on specialised bodies to combat racism xenophobia, antisemitism and intolerance at national level and GPR No. 7, which emphasise the importance of: the provision of sufficient funds to carry out the specialised body's functions; and its independence. ECRI also called on the authorities to ensure that this law strengthens the NCCD's investigation and research capacity as well as its legal department. Furthermore, ECRI strongly recommended that the authorities ensure that the NCCD has a member of the Roma community on its steering committee and in all its constituent structures and that it have branches at local level. Finally, ECRI recommended that the law establish a clear mediation procedure to preclude the NCCD from acting both as mediator and judge.

55. Further to the amendments of the Anti-discrimination Law, the last dating from 2006, the NCCD's structure and procedures have been modified in a significant way. Whereas in the past its independence had come under criticism due to its hierarchical subordination to the Government, it is now under parliamentary supervision. In addition, the number of members of the steering committee has been raised from seven to nine and the members are appointed by the two chambers of Parliament for a term of five years[39]. ECRI has also been informed that currently one of the appointed members is of Roma ethnic origin and two of Hungarian nationality. ECRI welcomes these positive developments. It notes, however, that civil society has acknowledged that the NCCD's steering committee remains politicised as support from political parties is, in most cases, a sine qua non condition for appointment. Furthermore both civil society and the authorities have revealed that not all members have expertise in the fight against discrimination. The Anti-discrimination Law as amended also provides for the setting-up of regional bureaus of the NCCD[40]. Whereas the NCCD's objective was to set up regional offices in each district in which an appeal court is located, as a result of the financial crisis only two regional bureaus have been established (in Buzau and Targu-Mures). Finally, the amended Anti-discrimination Law no longer requires that a petition is filed before the NCCD prior to lodging a

[38] The National Council for Combating Discrimination is the body responsible for fighting discrimination in Romania. Its tasks include: to rule on discrimination complaints or to deal with these claims of its own motion; to impose fines and draw up binding instructions on discrimination issues; to settle disputes by mediation and provide legal assistance to victims of discrimination. The government is required to consult on discrimination issues the National Council before putting a draft law before Parliament and its adoption.

[39] However, candidates can be proposed also by NGOs and in 2012 some of these candidates were appointed as members of the steering committee.

[40] Their role is to prevent and monitor discrimination at the local level, provide specialised assistance to victims and cooperate in the field of the fight against discrimination with local authorities and NGOs.

complaint before a court. However in this case the court has to ask the NCCD for an opinion.[41]

56. ECRI recommends that the Romanian authorities: ensure that the procedure in place for the appointment of steering committee members guarantees that selection be based on merit and competence in the field of the fight against (racial) discrimination and that the National Council for Combating Discrimination is not subject to any political influence; and to continue to ensure that one of the appointed members is of Roma ethnic origin.

57. As concerns ECRI's recommendation to ensure that the NCCD is provided with sufficient funds in order to carry out its work effectively and to ensure that the investigation and research capacity of this body, as well as its legal department are strengthened, ECRI notes that, unfortunately, there has been limited progress. While the NCCD's budget increased steadily between 2002 and 2008 (from an initial 200 000 Euros to 1 700 000 Euros) in 2009 the funds were cut by 30%. Additional downsizings have followed as a result of the financial crisis and currently the NCCD's budget stands at 900 000 Euros. Consequently, no new staff has been recruited. Most importantly, ECRI has been informed that additional funds are needed to improve document management, increase the number of legal assistants for steering committee members and secure adequate premises in which to work. In this connection, ECRI's delegation observed in the course of its visit in Romania that the premises of the NCCD were not clearly indicated or easy to find; furthermore, they did not appear to be suitable for such an important institution.

58. Furthermore criticism has been expressed by several of ECRI's interlocutors concerning the quality of the NCCD's decisions, in relation, in particular, to the legal reasoning. The authorities, however, rejected this criticism stating that the percentage of contested NCCD decisions that are confirmed by the civil or administrative courts is high. ECRI notes that even though under the Anti-discrimination Law breach of its provisions is sanctioned with a fine, in most cases the NCCD issues warnings or recommendations.[42]

59. ECRI reiterates its recommendation that the authorities ensure that sufficient funds be provided to the National Council for Combating Discrimination so that it can carry out its mandate effectively, specifically in order to: secure suitable premises; increase the staff of the legal department; and improve document management.

60. ECRI further recommends that effective, proportionate and dissuasive sanctions be imposed in practice by the National Council for Combating Discrimination.

61. As concerns ECRI's recommendation to establish a clear mediation procedure to preclude the NCCD from acting both as mediator and judge, the authorities have informed ECRI that the procedure in place is the same as the one described in ECRI's third report (paragraph 62).

62. In its third report, ECRI recommended that the authorities ensure that the NCCD is better known to the general public and to those affected by its mandate, namely national/ethnic minorities, judges, prosecutors, lawyers and law-enforcement officials.

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[41] For example, in 2012 the opinion of the NCCD was requested in 556 cases.

[42] In 2012, the NCCD imposed fines in 35 out of the 113 cases where it had found a breach of the Anti-discrimination Law. In 2011, the NCCD imposed fines in 22 out of the 94 cases where it had found a breach.

63. As concerns outreach capacity, according to a report of the NCCD, 49% of Romanians claim to be familiar with the NCCD's mandate. However, according to NGOs who deal with Roma issues, many members of the Roma community are not aware of the existence of this body or do not trust it.

64. In addition to training prosecutors and judges on anti-discrimination legislation and on the role of the NCCD, in cooperation with NIM[43] and the awareness-raising initiative mentioned in paragraph 48 of this report, the following steps have been taken by the NCCD in order to make itself better known to the general public. The Information and Training Caravan in the Field of Non-Discrimination was launched with financial support from the United Nations Development Programme (UNDP) in Romania. Its main objective was to disseminate information about the NCCD's mandate and activities; to this end, it prepared educational material and pamphlets and developed an information campaign on the Internet. In 2007 it also began publishing the magazine PRO diversitate with a view to publicising the NCCD's activities. Various information campaigns have been addressed to schools and teachers[44]. In 2009 the NCCD also organised a course addressed to police officers in the Harghita, Covasna and Mures counties on the prevention of discrimination against Romanian citizens of Roma origin. The NCCD has highlighted however, that more funds would be needed to carry out a sufficient number of awareness campaigns.

65. In its third report ECRI considered that the NCCD should be consulted by Parliament more often and that its recommendations on existing laws and its opinions on draft laws should be taken into consideration.

66. Under the Anti-discrimination Law, one of the NCCD's competences is indeed to ensure that laws do not infringe the principle of non-discrimination[45]. It can therefore be asked by the Parliament to formulate its opinion on bills' conformity with anti-discrimination law. The authorities have informed ECRI that in the course of 2010 and 2011, the NCCD was asked to issue an opinion 16 times. ECRI however has been informed by civil society that the NCCD fails to raise the non-conformity of a law with anti-discrimination legislation before Parliament, in the context of the complaints it receives.

67. ECRI recommends that the Anti-discrimination Law provide that the National Council for Combating Discrimination be empowered to issue opinions on any draft law affecting groups of concern to ECRI, even in the absence of a specific request from the Parliament. It further recommends that the National Council for Combating Discrimination make more ample use of its power to ensure that laws do not infringe the principle of non-discrimination.

68. ECRI notes that the NCCD has adopted a Strategy for Implementing Measures on Preventing and Combating Discrimination for 2007-2013. The strategy lays out guidelines in the field of the prevention and the fight against discrimination, including racial discrimination, in order to develop a society which is inclusive, intercultural and based on policies which facilitate interaction, equality and respect. Out of the many objectives which are set out, the NCCD has managed to carry out implementing activities relating to the training of magistrates, civil servants and teachers. The NCCD, however, has highlighted that it would be important for the Government to adopt this document.

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[43] See § 37 of this report.

[44] For instance, in May 2009 a public information campaign focusing on anti-discrimination legislation and on the prevention and the fight against discrimination was carried out in Harghita County in Plaiesii de Sus and in Casinu Nou.

[45] See Article 18(1) of the Anti-discrimination Law.

69. ECRI recommends that the Romanian authorities adopt a strategy on preventing and combating discrimination, building on the work already carried out by the National Council for Combating Discrimination in this field.

- *People's Advocate*

70. In its third report, ECRI recommended that the authorities increase the resources available to the People's Advocate[46] and that they ensure that the decisions of this institution are applied by all the bodies concerned. It also reiterated that they make parliamentary consultation of the Office of the People's Advocate compulsory regarding human rights questions.

71. In its last report ECRI noted that many persons who had filed a petition before the People's Advocate had been referred to NGOs. The authorities have informed ECRI that, in this connection, there has been an increase in the number of hearings granted by the People's Advocate. While in 2005, 8 529 hearings were granted, in 2011, these rose to 16 282. Also, only in the first trimester of 2012, 4 924 persons were received. Moreover, further to amendments to Law No. 35/1997 (on the organisation and functioning of the Ombudsman), the categories of complainants who can seize the People's Advocate has been broadened and now encompass companies, associations and other legal entities. ECRI welcomes these important developments. As concerns the budget of the Office of the People's Advocate, this, as for all other institutions, has been reduced due to the financial crisis which has affected Romania. ECRI notes that this circumstance did not seem to preoccupy the Office of the People's Advocate; the latter however stressed that more staff would be required in order to exercise effectively its mandate[47]. At the same time, ECRI notes that since its third report, 14 regional offices have been set up in the districts of the Courts of Appeal[48].

72. ECRI recommends that the authorities ensure that the funds made available to the Office of the People's Advocate are sufficient to secure a higher number of staff.

73. As concerns the need to ensure that the People's Advocate's decisions are applied by all the bodies concerned, the authorities have informed ECRI that between 2006 and 2011, the bodies which have been addressed with recommendations, have responded favourably. Parliament's consultation of the Office of the People's Advocate regarding issues related to human rights, however, remains discretionary.

74. ECRI recommends that the Romanian authorities ensure the possibility for the Office of the People's Advocate to advise *ex officio* the Parliament on issues of racism and racial discrimination.

75. Nonetheless, ECRI has received information indicating that the People's Advocate's action has not been decisive in relation to incidents implying possible violations of human rights. In addition to failing to address cases such as the violent inter-ethnic conflict in San Martin[49], criticism has been expressed around the fact that no recommendation was issued concerning the removal of a community of Roma persons in Baia Mare from their homes to a former chemical

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[46] The People's Advocate is responsible for settling disputes between individuals and government agencies and examines, inter alia, matters relating to national minorities, religious cults, justice and the police; it can also act ex officio. The People's Advocate is also involved in checking the constitutionality of laws.

[47] The Office of the People's Advocate employs 99 persons, 90% of whom are lawyers.

[48] These are Alba-Iulia, Bacău, Constanţa, Braşov, Suceava, Cluj-Napoca, Târgu-Mureş, Craiova, Iaşi, Galaţi, Oradea, Piteşti, Ploieşti and Timişoara.

[49] See the section on Vulnerable/Target Groups, subsection Roma.

factory which, allegedly, presented health hazards[50]. In this respect, the People's Advocate stated that the expert report presented by the relevant health inspectors concluded that the premises did not present any health risks; for this reason, the People's Advocate could not take any further measure. At the same time, it has stated that it will monitor the situation and ensure that the current living conditions are of a temporary nature. ECRI notes that the conclusion reached by the People's Advocate on this matter diverges significantly from NCCD's opinion[51] and finds it contradictory that, on the one the hand, the removal has been considered to be legal and the accommodation as not presenting any health hazards[52], and that, on the other hand, the People's Advocate has deemed necessary to monitor the situation and to verify that the above-mentioned measure is temporary.

76. ECRI considers that the People's Advocate should take decisive action against public authorities when it suspects that egregious human rights violations have been committed, particularly when these relate to racial discrimination.

- *Department for Inter-ethnic Relations (DIR)*

77. In its third report, ECRI recommended that the Romanian authorities support DIR's work by providing it with the necessary resources to carry out its tasks. ECRI emphasised in this respect that it is important for DIR to have branches in all the regions of the country.

78. ECRI has been informed by the authorities that DIR's budget[53] has increased steadily since 2006[54]. Furthermore, since ECRI's third report, six branch offices have been set up in the areas in which national/ethnic minorities are widely present. The mandate of these branch offices is to monitor the application of the legislation on national minorities. Their task is also to organise programmes at the local level in cooperation with the local authorities and NGOs and to ensure coordination between the local authorities and DIR. ECRI also welcomes DIR's awareness-raising campaign Know the Roma Before you Judge Them!, carried out in cooperation with the National Agency for Roma aimed at improving the population's attitude towards the Roma.

79. In its third report, ECRI recommended that the Romanian authorities amend Government Decision No. 141/2004 et seq. so as to enable all national minority organisations to receive funds from DIR. ECRI in fact had considered that the disbursement of funds only to those organisations who are members of the Council of National Minorities (which are therefore represented in Parliament) violated the rights of national/ethnic minorities to diversified political representation. In this connection, the authorities have pointed out that, in addition to the budget line for DIR (budget which is allocated amongst 19 organisations, members of the Council for National Minorities), a budget line is dedicated to inter-ethnic projects and programmes aimed at fighting intolerance. As concerns the latter, NGOs/associations may access these funds through an open call for proposals of projects. ECRI notes, however, that this same budget line is also used by DIR for cooperation programmes with intergovernmental organisations working in the field of the rights of national/ethnic minorities. ECRI considers that this arrangement is not sufficient to ensure that all national/ethnic

[50] See the section on Vulnerable/Target Groups, subsection Roma.
[51] See in this connection § 140 of this report.

[52] See also the section on Vulnerable/Target Groups, subsection Roma.

[53] DIR is under the authority of the Prime Minister; it drafts strategies and makes proposals to the Government in relation to the preservation, development and expression of the culture and the identity of national minorities.

[54] From 36 380 000 Lei in 2006 to 79 200 000 in 2012.

minority organisations receive the funds needed to promote and protect their identity.[55]

80. ECRI reiterates its recommendation that the authorities amend Decision No. 141/2004 so as to enable all national/ethnic minority organisations to receive funds from the Department for Inter-ethnic Relations.

II. Discrimination in Various Fields

Education

81. In its third report, ECRI urged the Romanian authorities to make Notification No. 29323/20.04.2004[56], issued by the Ministry of Education, legally binding.

82. Since ECRI's third report, a new law on national education has entered into force (Law No. 1/2011). Under its Article 3, the new law ensures "the recognition and the protection of the rights of persons belonging to national minorities, including, the right to preserve, develop and express ethnic, cultural, linguistic and religious identity" as well as the principle of equal opportunities. However, ECRI notes that a definition of segregation in education no longer figures in the law. This lacuna is worrying, particularly in light of the number of cases lodged before the NCCD on grounds of racial discrimination in the field of education between 2007 and 2012[57] .

83. The authorities have informed ECRI that: Notification No. 29323/20.04.2004 prohibiting all forms of segregation is legally binding and is sent twice a year to all headmasters, together with other acts which address the issue of segregation; that they have carried out training on desegregation and on intercultural relations; and that school inspectorates are aware of the need to carry out desegregation measures in schools[58]. The authorities have acknowledged however, that they are not sure whether the relevant information on segregation reaches the teachers. ECRI further notes that under Annex No. 1 of Order No. 1540/2007 on desegregation, a permanent working group was to be set up in order to elaborate methodologies and comprehensive programmes aimed at eradicating school segregation in the long term. ECRI regrets that this working group was never set up. The extent of the problem of segregation in schools will be further illustrated in the section on Vulnerable/Target Groups, subsection Roma.

84. ECRI strongly recommends that the Romanian authorities re-introduce in the Law on National Education the prohibition of segregation in schools. ECRI recommends that the authorities intensify the training on the fight against racial discrimination and segregation for all school teachers and headmasters of schools and set up the working group on the desegregation of schools provided for under Article 14 of Annex No. 1 of Order No. 1540/2007.

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[55] In 2013, the amount of 83 685 000 lei was allocated to national minorities and 3 915 000 lei to NGOs/associations.

[56] Under Notification No. 29323/20.04.2004, the Ministry of Education bans all forms of segregation in Romanian schools.

[57] Notably 181 petitions.

[58] See in this connection also the section on Vulnerable/Target Groups, subsection Roma.

Employment

85. ECRI is pleased to note that further to the entering into force of Law No. 340/2006, civil society organisations, including trade unions can now bring cases before court in the field of employment[59].

86. In its third report, ECRI recommended that the Romanian authorities conduct information campaigns in the private and public sectors in order to publicise the legislation on discrimination. It reminded them of the importance of helping victims of discrimination in asserting their rights either before the NCCD or the courts.

87. ECRI notes that one of the objectives of the Strategy of the Romanian Government on the Inclusion of Romanian Citizens Belonging to the Roma Minority for the period 2012-2020 is to promote programmes designed to raise employers' awareness on discrimination at work and social dialogue. In this connection, the authorities have confirmed that no specific awareness-raising campaign on anti-discrimination legislation has been carried out in the field of employment. During a survey of trade unions and employers in Romania, respondents agreed on the need for more public awareness-raising campaigns on existing anti-discrimination legislation to improve its application. In this connection, is worth noting that between 2007 and 2012, 159 complaints were lodged before the NCCD on grounds of racial discrimination in the field under examination.

88. ECRI recommends that the Romanian authorities carry out awareness-raising campaigns on the anti-discrimination legislation which target the general public as well as employers. ECRI also recommends that the authorities ensure that the objective relating to the promotion of programmes designed to raise employers' awareness on discrimination at work and social dialogue included in the Strategy of the Romanian Government on the Inclusion of Romanian Citizens Belonging to the Roma Minority for the period 2012-2020, is effectively pursued.

III. Racist Violence

89. ECRI addresses the issue of racist violence in the section on Vulnerable/Target groups, subsection Roma.

IV. Climate of Opinion and Racism in Public Discourse

90. ECRI notes that some positive measures have been taken by the authorities in order to foster a tolerant climate of opinion and to fight prejudice, particularly against the Roma. In 2007, the Romanian National Television launched a two-year programme dedicated to the promotion of the Roma culture and to combating prejudice. In 2008, DIR and the National Agency for Roma (NAR) also launched a project to increase knowledge of the situation of the Roma and to improve the way this community is portrayed in the media. In 2010 the National Audiovisual Council (NAC) cooperated with the NCCD in the context of a campaign in the media Dosta, Overcome Prejudices, Learn to Know the Roma. Furthermore, in 2012, the artist and senator Damian Draghiaci, of Roma ethnic origin, was appointed honorary state counsellor on Roma issues and coordinator of the inter-ministerial commission for the Roma strategy. ECRI welcomes the positive steps.

91. Nonetheless, as already noted by the Council of Europe's Commissioner of Human Rights, in the reference period, some politicians/parliamentarians have

[59] See in this connection the section on Existence and Application of Legal Provisions, subsection Civil and administrative law provisions.

made stigmatising statements and submitted racist legislative proposals, among others linking Roma with criminality and blaming this population for not trying to integrate. Hostile views with regard to the Roma are still echoed by the press and the audiovisual media, which continue to present negative and stereotypical images of the Roma. The same can be said as concerns many comments and articles published on the Internet.

92. As concerns political discourse, in 2007 three members of Parliament presented a draft law in order to change the official name of the Roma to tsigani[60]. ECRI has also been informed that, more recently, two MPs submitted an amendment to the Committee for the Revision of the Constitution proposing that "no minority, except those with common scientifically attested roots with the Romanians, be entitled to use in its official denomination the term 'Romanian' or variations/roots of this term"[61]. ECRI strongly condemns this initiative and considers that the amendment violates the right to self-identification of national/ethnic minorities, and therefore breaches Article 3 of the Framework Convention for the Protection of National Minorities[62], as well as Article 14 in conjunction with Article 8 of the ECHR and Article 1 of the Additional Protocol No. 12 of ECHR which prohibit discrimination inter alia on grounds national/ethnic origin and association with a national minority. ECRI further notes that in the course of 2007 and 2010 the President of Romania made a number of statements stigmatising the Roma community[63]. While in one of these two incidents the NCCD ruled that the anti-discrimination legislation was not applicable, given that the statement had been made outside the territory of the State[64], in the other two incidents the NCCD found that indeed, the anti-discrimination legislation had been violated and issued two warnings.

93. As concerns political discourse targeting other national/ethnic/religious minorities, in 2012 the Prime Minister appointed to the post of minister for parliamentary affairs a senator who had in the past denied the Holocaust during a television talk show[65]. ECRI has also been informed by civil society that a Romanian ambassador of Jewish faith was asked at a parliamentary hearing whether he would be loyal to Romania or to Israel. ECRI further notes that certain politicians and media have used very harsh discourse towards the Hungarians; this has created some tensions between the majority population and this community[66].

94. ECRI is concerned that none of the above-mentioned cases has spurred a strong reaction by the political class. ECRI has been informed by the Parliament that, although each MP has the right to freely express him/herself, a code of conduct which regulates MPs' behaviour, including racist speech, is in preparation. ECRI

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60 A similar bill was presented in 2010; both initiatives failed. According to DEX, the dictionary of the Institute of Linguistics of the Romanian Academy, this term designates, inter alia, "a person with anti-social behaviour". It was used up to 2013, by the same dictionary, to define the Roma. In 2012 a complaint was lodged with the NCCD concerning this definition. As a result, the Romanian Academy agreed to delete it.

61 According to the media, the two MPs stated at a press conference that their proposals targeted particularly the Roma, as their name uses the root of the term Romanian and in their view, is detrimental for Romania.

62 Article 3 provides that any person belonging to a national minority has the right to freely chose to be treated as such or not and no disadvantage can arise from such a choice or from the exercise of the rights related to it.

63 Statements of this nature were also made by two Ministers of Foreign Affairs in 2010 and 2012, who associated the Roma ethnic origin to delinquency; in these cases no warning or sanctions were issued.

64 This statement was made during an official visit in Slovenia.

65 He stated in particular that during the 1941 pogrom of Lasi only 24 persons had been killed by the Germans, whereas historians estimate that between 13 000 to 15 000 Jews were killed.

66 In this connection, please see the section on Vulnerable/Target Groups, subsection Hungarian community.

is also concerned that no effective mechanism is in place to sanction politicians and political parties which promote racism and discrimination.

95. ECRI strongly recommends that the Romanian authorities: ensure that the legislation prohibiting incitement to hatred is applied to all politicians who make racist statements; and introduce legal provisions on the obligation to suppress public financing of organisations, including political parties, which promote racism and discrimination. It further recommends that a code of conduct be introduced as soon as possible in Parliament regulating and sanctioning, inter alia, any racist discourse made by MPs.

96. ECRI also recommends that all the political parties take a firm stance against all forms of racism, racial discrimination and xenophobia and convey a clear political message in favour of diversity and pluralism.

97. ECRI's attention has been raised to a number of racist slurs and chants during football matches. More specifically, the supporters and the president of one of Bucharest's football clubs (Steaua Bucharest) have regularly made racist statements against the Roma[67], notably when matches with the team Rapid Bucharest are organised (this team is perceived as being a "Roma" club). In addition, during one match a banner was displayed expressing solidarity and respect towards an individual who had in the past killed various persons of Roma origin. ECRI further notes that there have been regular racist chants against CFR Cluj, a team from Cluj who is perceived as being Hungarian – these chants exhort the Hungarians to leave Romania. ECRI has been informed that the sport authorities have not reacted or interrupted matches in any such case.

98. ECRI recommends that the Romanian authorities encourage football federations, clubs and fans' associations to develop self-regulatory measures against racism and intolerance. Codes of conduct should address in particular the question of racist conduct of fans. It draws the authorities' attention to its General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport, which contains guidelines in this respect.

Media and the Internet

99. In its third report, ECRI recommended that the Romanian authorities ensure that the provision of the Criminal Code which prohibits incitement to hatred is applied more forcefully when the media publish discriminatory articles.

100. ECRI has been informed that there has been an improvement as concerns the number of articles in the national press and the number of advertisements in the media which are of a racist nature. This improvement, however, does not appear to be mirrored at the local level and on the Internet.

101. As concerns the Internet, with the exception of the message disseminated by the extremist group mentioned in this report in the section on Existence and Application of Legal Provisions, subsection Criminal law provisions, which incited Roma women to carry out sterilisation procedures, many racist comments disseminated through the Internet have not been met with a criminal response; at most they have been met with a sanction by the NCCD[68]. ECRI is pleased that the NCCD monitors the Internet and the television for discriminatory comments.

[67] The president of this football club, in particular, has made racist statements on his Facebook profile against the Roma and Hungarian community.

[68] For instance, the NCCD issued warnings in a case involving a vacancy announcement posted on the Internet discriminating against Roma as well as against the president of the local section of the Liberal party in Alba Iulia, who posted a message on his Facebook profile supporting the sterilisation of Roma women.

As concerns the former, ECRI understands that the NCCD may sanction both the author and the website administrator; it may also ask the website administrator to remove any such comment and apply a sanction if s/he fails to do so. ECRI has been informed, however, that it does not have the necessary staff to monitor the Internet systematically. Despite this, ECRI stresses once again the importance of having a system in place to monitor the internet for racist comments.

102. ECRI is also aware that NAC, the regulatory authority in the field of audio-visual programmes, monitors the television and the radio to ensure, inter alia, that they do not discriminate and incite to hatred on grounds of interest to ECRI. NAC can also act further to a complaint. This body can issue a wide array of fines, including the withdrawal of an audiovisual license. It also adopted in 2011 a Regulatory Code of Audiovisual Content which spells out further the prohibition to discriminate on grounds of interest to ECRI. Between 2006 and 2012, NAC issued 11 reprimands warnings and imposed three fines on television channels for having breached the anti-discrimination provisions of Law No. 504/2002 (the Audiovisual Law) on grounds of interest to ECRI.

103. ECRI recommends that the Romanian authorities ensure that an efficient system is in place to monitor the Internet for racist comments.

104. In its third report, ECRI recommended that the Romanian authorities continue to offer the national and local media training courses on combating discrimination.

105. Training courses on how to combat racial discrimination have been organised on a regular basis for journalists, including for Roma journalists. For example, DIR held a seminar on inter-cultural dialogue in Sinaia in March 2008. A course on Training the Trainers: Diversity Workshop was also organised in November 2011; its purpose was to provide journalist trainers with diversity and non-discrimination skills in order to apply them in their training courses. Between 2005 and 2012, the Centre for Independent Journalism (CIJ)[69] in Bucharest coordinated five programmes for media professionals, focusing in particular on Roma issues. It also organised a training programme for persons of Roma origin who would like to become journalists; many of whom have successfully mastered the profession. ECRI notes that this programme ended in 2007 and that the Government did not provide any funding.

106. ECRI recommends that the Romanian authorities further increase the training initiatives for the national and local media on the fight against racial discrimination, especially when they report about minorities. ECRI recommends that the authorities make available, to this end, resources to those organisations which work efficiently in this field.

V. Vulnerable/Target Groups

Roma

- *Strategies for improving the situation of the Roma and the National Agency for Roma (NAR)*

107. In its third report, ECRI urged the Romanian authorities to allocate the necessary funds to the bodies and programmes responsible for implementing the 2001 Strategy for Improving the Situation of the Roma (the 2001 Strategy). It also recommended that they ensure that the ministries responsible for implementing the 2001 Strategy fulfil their obligations. Furthermore, ECRI urged the authorities to conduct an appraisal of the above-mentioned strategy in order to establish the

[69] CIJ is a non-governmental, non-profit organisation, which offers courses and specialised training for journalists and media organisations.

results and redefine its parameters where necessary, with the participation of the relevant NGOs. Finally, ECRI called on the Romanian authorities to secure the necessary political will to ensure the success of this strategy.

108. As concerns the 2001 Strategy[70], the authorities have informed ECRI that a number of objectives have been attained in the field of employment, education and health. Among the results which have been referred to, is the effective employment of Roma mediators at school and in the field of health. This strategy was replaced by the Strategy of the Romanian Government on the Inclusion of Romanian Citizens Belonging to the Roma Minority for the period 2012-2020, adopted by the Government on 14 December 2011 (the 2012 Strategy). A draft of this document was subject to public consultation[71]. The 2012 Strategy sets a number of objectives with respect to the Roma, notably: ensuring equal and free access to education; eliminating segregation in schools and fighting racial discrimination in this area; stimulating employment growth; increasing access to public health services; ensuring better living conditions; preserving and developing their cultural identity; addressing other fields such as community development, child protection and justice and public order. It also lays out expected results and indicators for certain objectives and sets up a mechanism for monitoring and assessing its implementation both at the central and the county level[72]. The authorities have informed ECRI that an inter-ministerial working group at central level[73] and Roma County Bureaus within the Prefects' offices, as well as local public administration at local level, will be responsible for the implementation of the 2012 Strategy and its coordination with the 2001 Strategy.

109. Notwithstanding the above, a number of ECRI's interlocutors, including State authorities, have drawn its attention, to the fact that while the administrative framework needed to implement the two above-mentioned strategies exists, significant hurdles hinder and have obstructed their implementation. These include, first and foremost: the next to nil allocation of funds from the national budget to the two strategies - these rely predominantly on EU funding; the ineffective coordination between the ministries involved in their implementation and, more importantly, the lack of accountability of local authorities to the central ones. In this last respect, ECRI has been informed that further to the administrative decentralisation reform in Romania, many issues included in the strategies fall within the sole competence of the local authorities. This has proved to be problematic as local authorities have often been reluctant to launch programmes for the Roma, considering that these are unpopular among their constituencies. Furthermore, the impact of the 2001 Strategy has never been evaluated. Lastly, thus far, the Government has shown little political will to ensure the success of the two strategies.

110. ECRI strongly recommends that the Romanian authorities ensure that sufficient funds are allocated and a strong impetus is given to the Strategy for Improving the Situation of the Roma; ensure coordination between the ministries; and

[70] Its aim was to improve the situation of the Roma in all the following areas: public administration, social security, health, economy, justice and public order, child protection, education, culture, communication and civic participation.

[71] Representatives of civil society have highlighted, however, that most of the proposals made by them were not taken on board.

[72] Notably, it establishes a Central Department for Monitoring and Assessment, headed by a State Councilor of the Government and includes the President of NAR, as well as representatives from six ministries. At the county level, county bureaus for Roma should ensure the monitoring activities of the 2012 Strategy at this level of administration.

[73] 14 Ministries are represented within this body and is coordinated by the Vice Prime Minister and is chaired by the President of NAR.

guarantee the accountability of the local authorities to the central authorities in implementing the Strategy.

111. ECRI reiterates its recommendation to the Romanian authorities to conduct an appraisal of the 2001 strategy in order to establish its impact and redefine its parameters where necessary.

112. In its third report, ECRI recommended that the Romanian authorities provide the National Office for the Roma with the staff and funds it needs in order to implement the Strategy for Improving the Situation of the Roma. ECRI also recommended that the Romanian authorities ensure co-ordination of the activities relating to the Strategy for Improving the Situation of the Roma and to the Decade for the Inclusion of the Roma[74].

113. NAR's mandate (formerly National Office for Roma), includes launching, participating in and promoting projects to improve the situation of the Roma, in cooperation with national and international institutions and NGOs. During the economic crisis, the number of staff employed in NAR fell from 52 posts originally foreseen in 2005 to 30 in 2011, of which only 22 were filled. As mentioned earlier on, NAR plays and has played an important role in monitoring the implementation of the 2001 and 2012 Strategies. It has contested, however, its role in the implementation of the latter strategies, stating that it merely provides expertise and counselling in this respect. NAR has informed ECRI that it has also been responsible for the implementation of six projects between 2007 and 2013, funded primarily by the European Social Fund – among which projects aimed at keeping or readmitting Roma pupils in the school system (including after-school programmes and second-chance programmes) and projects focusing on the promotion of social inclusion (involving the development of integrated social services, improving access to the labour market and promoting equal opportunities between women and men in this field). ECRI welcomes these initiatives; it notes however, that civil society and representatives of Roma have indicated that these projects are "just a drop in the ocean" and are not sufficient to have a meaningful effect.

114. As concerns the Decade of Roma Inclusion 2005–2015 aimed at reducing the socio-economic gap between Roma and other citizens[75], the authorities have informed ECRI that in 2006 a loan was contracted by Romania with the International Bank for Reconstruction and Development in order to implement the above-mentioned programme. However, various interlocutors, including representatives of the authorities, have informed ECRI that little progress has been made in its implementation. Reports indicate that the Decade partly duplicates the 2012 Strategy and no information has been provided by the authorities as to whether there is any coordination between the two.

115. ECRI reiterates its recommendation to the Romanian authorities to ensure co-ordination of the activities relating to the Strategy of the Romanian Government on the Inclusion of Romanian Citizens Belonging to the Roma Minority and the Decade of Roma Inclusion.

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[74] In its report of May 2006, the European Commission noted: "The administrative framework exists, but little effective progress was recorded. The coordinating capacity of the National Agency for Roma is still weak. Efforts to ensure the efficient implementation of the Strategy to Improve Roma's Condition are insufficient". Commission Staff Working Document, May 2006 Monitoring Report Romania, Brussels, 16/05/2006, SEC (2006) 596.

[75] It promotes active policies for the social inclusion of Roma in education, health, employment and housing in order to fight poverty, gender inequality and other forms of discrimination.

- *Education*[76]

116. ECRI notes that notwithstanding steps taken by the authorities towards combating school segregation and discrimination towards Roma pupils, these two phenomena remain a serious reason for concern. ECRI has been informed that an exact estimate of the extent of school segregation is lacking; however, various surveys carried out by civil society have highlighted that the number of classrooms/schools in which Roma pupils are segregated is very high[77] [78]. In addition to what has already been mentioned in the section on Discrimination in Various Fields, subsection Education, the authorities have informed ECRI that since 2007 each County School Inspectorate has been requested to present a report on the segregation of Roma pupils and a desegregation plan. ECRI also has been informed that the Ministry of Education has been compiling the data contained in these reports; ECRI has not received any indications, however, as to how it has been used.

117. ECRI recommends that the authorities carry out a comprehensive assessment on the extent of school segregation of Roma pupils and take specific action on the basis of the results of the reports on segregation submitted by the County School Inspectorates.

118. ECRI has been informed that, in addition to socio-economic factors, discrimination by teachers and other pupils remains a disincentive for Roma children to complete their studies. There have been reports of Roma children being placed in the back of classrooms, of teachers ignoring Roma pupils and of bullying by other school children.

119. In its third report, ECRI recommended that the Romanian authorities introduce programmes enabling Roma children to participate fully in classroom tuition and that free meals could be one of the facets of these programs.

120. ECRI notes that since its third report on Romania a number of education-support programmes have been launched or continued with a view to assisting pupils who are socio-economically disadvantaged, including the Roma. In addition to the Bread Roll and Milk programme[79], the following ones have been initiated:

- In the School after School programme[80] pupils receive extra support to complete their homework from qualified teaching staff and can carry out extra-curricular activities. While this programme has increased the attendance rate of pupils, it has unfortunately involved only primary school pupils. Furthermore, since local authorities have taken it over, its financing has decreased.

- The Second Chance programme[81] provides education to children or young persons who have dropped out of school in order either to readmit them in

[76] As concerns the teaching of the Holocaust in relation to its impact on Romanian Roma, see §§ 152 and 153 of this report.

[77] For instance, according to a study carried out by an NGO in cooperation with UNICEF, One School for All? Access to Quality Education for Roma Children - Research report - Gelu Duminicã, Ana Ivasiucout, out of 100 educational establishments surveyed, segregation of Roma pupils was found in 31 establishments.

[78] See on this point also paragraph 153 of the 3rd Opinion on Romania of the Advisory Committee of the Framework Convention for the Protection of National Minorities. http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_OP_Romania_en.pdf.

[79] See ECRI's third report on Romania, § 131.

[80] This programme has been widely implemented in Romania, including in one of the schools which the ECRI delegation visited.

[81] Reports show that twice as many persons of Roma ethnic origin have participated in this programme compared to persons of non-Roma ethnic origin.

regular classes or to enable them to attend classes while continuing their occupation.

- Money for High School[82] provides financial support to pupils who continue upper secondary education. However, the sums allotted cover in most cases only transportation costs and are therefore deemed insufficient.

- Special Seats for Roma Pupils in High and Vocational Schools programme. This is one of the few measures which address the needs of Roma pupils exclusively. Under this programme, pupils who wish to continue their education beyond the eight compulsory years of schooling can do it without having to participate in selection examinations. A problematic aspect of this programme is that most Roma who would like to continue schooling do not wish to disclose their ethnic origin. Furthermore, this system does not provide counselling aimed at directing pupils towards the schools which best match their level of schooling, and therefore does not curb the risk of school drop-out.

ECRI is very pleased about the variety of initiatives which have been launched**.** It notes, however, that no specific programmes focus on the enrolment of Roma children in pre-school. ECRI deems that such enrolment is of essence to fight the underachievement of Roma pupils in the education system, as well as school segregation.

121. ECRI urges the authorities to maintain and perfect the educational programmes aimed at pupils who are socio-economically disadvantaged, with a view of assisting Roma pupils. It further recommends that these programmes be supported by sufficient funds.

122. In its third report, ECRI recommended that the Romanian authorities continue to train Roma school mediators and give them a clear legal status. It encouraged them to continue training Roma and non-Roma teachers in order to prepare them to work with pupils from different ethnic groups.

123. The authorities have informed ECRI that, according to the Law on National Education, Roma school mediators[83] [84] are auxiliary didactic personnel. Since ECRI's third report, 330 school mediators have been trained by the authorities, NGOs and international organisations. Moreover, 240 school mediators were trained under a project financed by the Council of Europe. Civil society has highlighted however, that the number of school mediators has decreased significantly over the last years, due to the financial crisis[85].

124. In its third report, ECRI recommended that the Romanian authorities take steps to improve Roma children's self-image. It considered that the Romanian authorities should teach Roma's contribution to Romanian society throughout the country's history, together with their culture and language, at all educational levels.

125. In addition to the information provided in the section on Education and Awareness Raising, the authorities have informed ECRI that in the 2012/2013 academic year Romani language was taught in 20 kindergarten and 12

[82] Reports show that 1 433 schools have implemented this programme, however the number of Roma pupils who have requested this support is much lower compared to non-Roma pupils.

[83] Roma school mediators help schools and teachers to integrate Roma pupils by pinpointing the difficulties that these children face, which prevent them from participating fully in the school activities. They also mediate between parents, schools and teaching staff.

[84] See on this point also paragraph 154 of the 3rd Opinion on Romania of the Advisory Committee of the Framework Convention for the protection of National Minorities.

[85] The authorities have indicated that 437 school mediators were employed in the academic year 2011/ 2012.

preparatory classes. Reports indicate, however that the number of teachers trained to teach Romani has decreased during the 2011/2012 academic year as compared to 2010/2011.

126. ECRI recommends that the Romanian authorities promote and support the teaching of the Romani language as part of an effort to improve Roma children's self-image and knowledge about their culture.

- *Employment*

127. In its third report, ECRI urged the Romanian authorities to introduce programmes to ensure the long-term integration of Roma into the labour market and to ensure that state agencies, civil society and industry co-operate to this effect. It recommended in particular that the authorities set up programmes granting preferential loans to Roma and positive recruitment measures. It also recommended that they ensure that the Strategy for Improving the Situation of the Roma continues to emphasise the need to integrate members of the Roma community into the labour market.

128. ECRI notes that it is hard to determine with precision the exact number of persons of Roma origin who are currently legally employed; this is also due to the absence of a comprehensive system for the collection of data for the purposes of assessing the situation of groups of concern to ECRI[86]. Nonetheless, according to reports, only 35.5% of Roma were employed in 2011[87], against a general unemployment rate of 7.4%[88]. The authorities have identified the following as being the main obstacles to securing the durable employment of the Roma: the lack of personal identification documents in many cases; low educational background; low income which hinders their ability to reach places in which training workshops are organised; the entitlement to a minimum guaranteed income; high levels of discrimination towards this community[89].

129. The authorities have informed ECRI of a number of employment programmes led by the National Employment Agency (NAE) (also in the context of the Strategy for Improving the Situation of the Roma) whose aim was to: increase the level of employment of the Roma, develop their professional skills, assess their knowledge, as well as the means to improve their qualifications. These include: yearly job fairs with a view to facilitating Roma's access to potential employers and helping them understand the qualifications sought; special employment programmes for communities with a large Roma population which encompass measures such as job matching, vocational counselling and training; and subsidies for employers who hire unemployed Roma aged over 45. The authorities also finance a number of centres which assess, free of charge, the competencies and skills of Roma seeking employment acquired also through informal means and issue certificates which may be helpful for future employment. The authorities have informed ECRI that Romania does not have a programme in place granting preferential loans to Roma to start up a business.

130. ECRI reiterates its recommendation that the authorities set up programmes granting preferential loans to Roma and positive recruitment measures.

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[86] See in this connection, the section on Monitoring Racism and Racial Discrimination.

[87] See Roma Situation in Romania, 2011 Between Social Inclusion and Migration Country Report – Romania, 2012, Soros Foundation.

[88] National Statistics Institute (Labor Force Survey Eurostat).

[89] In this respect it is to be noted that the number of discrimination complaints in the field of employment lodged before the NCCD on grounds of concern to ECRI have increased from 19 in 2007 to 51 in 2012.

- *Health*

131. A report of the UNDP[90] indicates that, while Romania faces in general challenges in improving access to health (also due to the brain drain of medical personnel), Roma health concerns are particularly pressing in this country. By way of example, according to a report of the Fundamental Rights Agency (FRA) and the UNDP[91], only 45% of the Roma who had been surveyed stated that they had medical insurance, as opposed to 85% of the non-Roma population[92]. More generally, representatives of civil society and of the Roma community, as well as the authorities have informed ECRI that Roma continue to represent the ethnic group which is most affected by discrimination in the field of health. There were cases when Roma were refused medical treatment, or segregated in separate wards in hospitals (including some cases of pregnancies)[93]. They have a higher mortality rate and lower life expectancy.

132. ECRI is pleased to note, however, that the Ministry of Public Health has established a system of community medical nurses and Roma health mediators, as an interface between providers of medical and social services and the Roma community, in order to improve the health status of this population. This framework aims to assist in particular those who do not have medical insurance and/or who live in rural areas and do not have access to general physicians. For instance, they are provided with information on their rights, on the importance of vaccination and on having health insurance. At the same time, ECRI has been informed by the authorities that the number of health mediators and community nurses has dropped in recent years. As of 2008, further to the administrative decentralisation in Romania, they were no longer employed by the Ministry of Public Health but by local authorities. ECRI has been informed that the local authorities have often failed to understand their role or have willfully employed them for other purposes.

133. ECRI strongly recommends that the Romanian central authorities uphold and strengthen the system of medical nurses and Roma health mediators. They should ensure that local authorities are held accountable for any misuse of these positions and for the implementation of this programme.

134. ECRI has also been informed that in January 2011 a project partly financed with European structural funds was launched with a view to setting up a Centre for Training and Certification of Health Mediators and a Unit for Technical Assistance, Monitoring and Evaluation of Health Mediators. The authorities have informed ECRI that 120 mediators and 15 community assistants have already been trained and that a special unit is entrusted with monitoring the impact of this project. ECRI encourages the authorities in their efforts.

135. Lastly, according to the above-mentioned UNDP report[94], Roma respondents reported particularly low child vaccination rates. In this respect, the authorities have informed ECRI that vaccination campaigns targeting Roma children have been conducted, covering a total of 1 323 children.

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[90] The Health situation of Roma Communities, Analysis of the UNDP/World Bank/EC Regional Roma Survey Data Policy Brief Dotcho Mihailov.

[91] See The situation of Roma in 11 EU Member States, Survey results at a glance, 2012.

[92] While emergency services are free of charge, health insurance is required to access primary and secondary health care. Nonetheless, under Article 213 of Law No. 95/2006 the following categories of persons are entitled to free access to healthcare : children below 18 years old and youth up to 26 years of age if enrolled in higher education, persons with certain disabilities, pregnant women.

[93] See in this connection also the FRA 2011 annual report: Fundamental rights: challenges and achievements in 2011, p. 169.

[94] See footnote 90.

136. ECRI recommends that the Romanian authorities carry out a comprehensive assessment on the number of Roma children who have not been vaccinated and multiply the vaccination campaigns targeted at this part of the population.

- *Identity documents*

137. In its third report, ECRI urged the Romanian authorities to carry out campaigns without delay to provide identity papers to members of the Roma community who do not have them.

138. ECRI has been informed by the authorities that they are not aware of the precise number of persons of Roma origin who lack identification documents or birth certificates. ECRI understands, however, that a significant number of Roma are affected by this problem. The lack of identity documents precludes them from participating in elections, receiving social benefits, accessing health insurance, as well as primary and secondary health care, securing property documents, and participating in the labour market.

139. ECRI has been informed by the authorities that since ECRI's third report on Romania, they have carried out a number of activities in order to tackle this problem. Together with the police, the relevant directorate of the Ministry of Internal Affairs has gone to various municipalities with a mobile caravan in order to encourage and facilitate the issue of identity documents to those who lack them. Although under Romanian legislation a permanent residence is required in order to obtain an identification document, the authorities have issued identity documents with only the indication of the locality in which the person lives (and not the permanent address), as many Roma do not have a legal residence/domicile. The authorities have also informed ECRI that they have carried out information campaigns on the importance of obtaining identity documents and registering births. According to the authorities, further to the activities carried out in 2011, 25 569 persons of Roma origin have obtained identity documents. ECRI welcomes these initiatives.

140. ECRI recommends that the authorities commission a study in order to assess how many persons of Roma origin lack identity documents or documents concerning their civil status. It further recommends that this issue be given priority in the context of the Strategy of the Romanian Government on the Inclusion of Romanian Citizens Belonging to the Roma Minority.

- *Other forms of discrimination against the Roma*

141. In its third report, ECRI strongly urged the Romanian authorities to take steps to ensure that members of the Roma community have access to decent housing. It also called on them to impose penalties on local government officials who engage in discriminatory practices against Roma in, among others, the area of housing.

142. ECRI notes that the concerns expressed in this connection in its third report have not been addressed; this needs to happen urgently[95]. Notably, ECRI has been informed that several Roma communities have been evicted from their homes by the authorities with little advance notice, in the absence of prior consultation and have been relocated to insalubrious sites and segregated areas. Moreover, whereas some families have been provided with makeshift housing which does not meet minimum living standards, others have been left homeless.

[95] According to the letter sent to the Prime Minister of Romania on 17 November 2010 by the Council of Europe Commissioner for Human Rights, approximately 60% of Roma in Romania live segregated from the majority population in communities with inadequate housing and without access to basic services.

Furthermore, under the Law on Housing, the above-mentioned persons are not given priority access to social housing.

143. ECRI urges the authorities to address the problem of Roma housing as a matter of priority. A number of viable housing options, including social housing and subsidies for the rental of dwellings, should be laid out and discussed with the Roma community. Any provision in the law which hinders in practice Roma's access to social housing should be abrogated.

144. The most serious cases of eviction have taken place in Baia Mare and Cluj Napoca. As concerns the first incident, reports have indicated that in 2012 around 500 persons of Roma ethnic origin were evicted from their homes and relocated to buildings belonging to a disused chemical factory[96]. As a result of exposure to toxic substances present in the buildings, 22 children and two adults were hospitalised. In addition, while some of the families who had been evicted were allocated lodgings with communal sanitary facilities, insufficient living space and no heating, other families were left to fend for themselves. The authorities have assured ECRI that they have carried out an investigation as concerns the alleged intoxication and that this had not been confirmed. The NCCD, however, has found that the health conditions in the above-mentioned premises are unacceptable and that the eviction did amount to discrimination. ECRI moreover notes that a criminal investigation was opened further to the relocation of the families; however ECRI has not been informed of its outcome. As concerns the second incident, reports indicate that in December 2010 around 60 families were forcibly evicted from their homes in the centre of Cluj-Napoca and were relocated to Pata-Rât, an industrial area close to the city's rubbish dump, in the margins of the city. A very short notice (one day) was given and the accommodation provided by the local authorities lacks basic utilities and transportation is not readily available. As a result, these families' housing conditions and their access to work, education and health care have been badly affected.

145. ECRI urges the Romanian authorities to take urgent measures to protect Roma from forced evictions by ensuring that: 1) an opportunity for consultation by those affected is created; 2) information on proposed evictions is provided with reasonable notice; 3) adequate resettlement opportunities are provided; and 4) legal remedies are provided by the law, regardless of ownership status, so that they can seek redress through the courts.

146. Another incident which is of serious concern to ECRI is the construction of a two-metre high and 100–metre long wall around an apartment building primarily inhabited by persons of Roma origin in Baia Mare in 2011. The local authorities have stated that the purpose of the wall is to separate the building from the adjacent road in order to minimise the risk of accidents. Civil society has raised concerns about enhanced segregation of the Roma community. The NCCD, in a decision that has been challenged before the courts, has found that this measure amounts to discrimination on racial grounds[97]. The national authorities do not deny that this measure could be considered as discriminatory; however, they maintain that, as a result of decentralisation, local authorities enjoy full autonomy

[96] Furthermore, ECRI has been informed that on 2 August 2013, around 30 families living in Baia Mare were served with demolition orders by the local police. As a result, on August 5th, 15 homes were torn down. The owners were not provided with alternative accommodation.

[97] This decision was overturned by a court of appeal; however the court's decision has been further challenged before the Supreme Court which upheld the NCCD decision imposing a fine of 6 000 lei**,** and recommending to tear down the wall.

in these matters. ECRI, however, has been informed that prefects[98] are under the obligation of verifying the legality of decisions taken at the local level and of taking measures if decisions are in breach of the law.

147. ECRI strongly recommends that local authorities and prefects be held accountable by national authorities for actions taken at the local level in breach of anti-discrimination legislation and criminal law provisions against racism. Furthermore, ECRI recommends that an adequate mechanism, enabling the central authorities promptly to intervene in such cases, be readily available.

148. The urban slum in Ferentari, primarily inhabited by Roma (which represent 70 to 80% of the population) is also a cause for concern. The slum consists in barracks in serious disrepair, in respect of which the dwellers do not have legal ownership, with waste accumulating between the lodgings. ECRI has been informed that in the last five years drug dealing has become the main occupation in the ghetto, involving children as young as 10 years of age; there have been numerous deaths due to overdose of drugs and growing violence; furthermore girls as young as 12 years old are subject to prostitution and are increasingly HIV positive and or have early pregnancies. An NGO has created a community centre to try to address the above-mentioned problems, by offering meaningful extra-curricular activities (sports, music, dancing) and after school remedial education. As a result many children who had dropped out of school or who were addicted to drugs have been readmitted in school. ECRI has also been informed by the authorities that they intend to carry out a pilot project in Ferentari in order to tackle the multitude of problems in the area of housing, education, health and drugs. ECRI notes, however that the above-mentioned NGO, which is meaningfully involved in the resolution of the neighbourhood's problems, was not aware of this project.

149. ECRI strongly recommends that the Romanian authorities devise a comprehensive project aimed at resolving the dire living conditions present in the neighbourhood of Ferentari and build on the meaningful work already carried out by NGOs working in that area.

150. ECRI has been informed by the authorities that they are aware of the dramatic living conditions of most Roma and that a programme addressing this problem was launched in 2010. This programme aimed to build 300 housing units, including social housing, for the Roma in eight regions. The authorities however, have revealed that due to budgetary cuts, the programme could not be finalised.

- *Racist violence*

151. ECRI's attention has been drawn to a number of racially motivated incidents against the Roma, some of which bear resemblance to the violent incidents of the 1990s against some Roma communities which resulted in the destruction of homes, improper living conditions and bodily injuries[99]. More specifically, on

[98] The prefect represents the Government at the local level and is hierarchically subordinated to the Ministry of Internal Affairs.

[99] See in this connection, the following cases of the European Court of Human Rights: Moldovan and others (No.1) v. Romania no. 41138/98, 17 July 2005; Moldovan and others (No. 2) v. Romania No. 41138/98, 64320/01, 12 July 2005; Kalanyos and others v. Romania No. 57884/00, 26 April 2007; Gergely v. Romania No. 57885/00, 26 April 2007; and Tănase and others v. Romania No. 62954/00, 26 May 2009. These cases concern the consequences of racially motivated violence against villagers of Roma origin, in particular improper living conditions following the destruction of their homes. They also concern the general discriminatory attitude of the authorities, including their repeated failure to put an end to breaches of the applicants' rights, perpetuating their feelings of insecurity (Articles 3, 6, 8, 13 and 14 in conjunction with Articles 6 and 8). The violent incidents at the origin of these cases occurred between 1990 and 1993 in the communities of Hădăreni (Mureş County), Plăieşii de Sus and Caşinul Nou (Harghita County) and Bolintin Deal (Giurgiu County). The case of Moldovan and others involved 25 applicants, 18 of

31 May 2009 a fight broke out between a group of persons of Roma origin and two persons of Hungarian origin in San Martin (resulting in the injury of one person of Hungarian origin) due to this last group's discontent that the Roma were grazing their horses on their private property. This conflict led to an escalation of violence against the whole Roma community. A group of persons destroyed houses and several cars belonging to the Roma population. As a result, the Roma community fled into the woods and lived there for several months. ECRI has been informed that the police launched an investigation against 38 persons for destruction and violation of private property. ECRI has also been informed that some mediation efforts were initiated by the mayor and as a result a protocol was signed by the representatives of the communities; nonetheless, this protocol has been highly criticised by human rights NGOs and by Roma representatives who deem that it imposes obligations solely on the Roma community. ECRI has been informed by civil society that this community still lived in the woods in the autumn of the same year and that no significant efforts had been made to assist them materially and to ensure their smooth reintegration into the community. In the course of the same year, a second incident took place in Sancraieni between the two above-mentioned minorities, culminating in the arson of the house of a person of Roma origin who had been involved in the fight. Once again this conflict resulted in the signing of a protocol which was criticised for the same reasons as stated above. A third conflict took place in the town of Racos in 2011. According to civil society, after a fight broke out between a Roma family and the mayor's family, several persons attacked the Roma population, including a Roma minor. The Mayor's Office subsequently hired a private security firm stating officially that it needed to deal with the Roma community, whose members commit criminal offences. ECRI considers that any security measure taken solely on grounds of ethnic origin amount to direct racial discrimination.

152. ECRI notes that the above-mentioned incidents demonstrate that significant efforts need to be made by the Romanian authorities to address the ethnic tensions between the Roma and other segments of the population. ECRI notes that these tensions were already present in the 1990s and had culminated in the European Court of Human Rights' (ECtHR) finding that Romania had violated several provisions of the ECHR as well as the Romanian State agreeing to adopt a number of general measures in the affected communities[100]. The authorities have stated that they have encountered significant difficulties as concerns the funding of the above-mentioned measures. Furthermore, several of ECRI's interlocutors have highlighted that few actions have been undertaken and that they relate mostly to formal aspects and not concrete programmes.

153. ECRI strongly recommends that the Romanian authorities give decisive impetus to the implementation of the general measures they have undertaken to apply further to the judgments handed down by the European Court of Human Rights against Romania. ECRI further recommends that similar measures and programmes be developed for the communities which have been affected in the meantime by racially motivated violence against the Roma.

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whom agreed to a friendly settlement of their case. In the cases of Kalanyos and others, Gergely and Tănase and others, the authorities made unilateral declarations by which they accepted that the events at issue had given rise to violations of the Convention. The Romanian authorities have submitted action plans providing information on and an assessment of all the measures taken, or envisaged for the execution of the judgements in this group of cases, including action plans aimed at: eliminating various forms of discrimination and preventing similar conflicts; stimulating Roma participation in the economic, social, educational, cultural and political life of the local communities; and implementing programmes to rehabilitate the housing sector in the affected communities.

[100] In this connection, see footnote 99 of the report.

154. ECRI has also been informed that in 2012 in three different instances (in one case further to an altercation between persons of Roma origin and non-Roma, and in two other cases further to thefts committed by a person of Roma origin), the police shot and killed three Roma. ECRI understands that prosecutor's investigations found the conduct of the police in these cases justified as self-defence or state of emergency. However, according to information provided by civil society the Roma did not pose an immediate risk to the life of police officers or others.[101]

Jewish community

155. In its third report, ECRI urged the authorities effectively to punish organisations and individuals who promote revisionist or antisemitic views in order to deny or minimise the existence of the Holocaust in Romania. It encouraged them to continue informing and educating the public about this period of Romanian history.

156. ECRI is pleased to note that in October 2009, a monument was inaugurated to commemorate the Jewish and Roma victims of the Holocaust in Romania. ECRI has also been informed by the authorities that the Holocaust is taught in grades 6 to 12 at school. At the same time, civil society has pointed out that these courses concern the Holocaust in general and are not linked to historical events in Romania. In this connection, ECRI has been informed that a book on the Holocaust in Romania has been adopted by the Ministry of Education; however, the relevant course is optional. In light of what has already been mentioned in other sections of this report and what will follow in the paragraphs below, ECRI deems that it is necessary to teach the Holocaust both in the general context of World War II but also in relation to its specificities in Romania.

157. ECRI recommends that the authorities ensure that the Holocaust is taught in schools, inter alia, in relation to its specificities in Romania and its impact on Romanian Roma and Jews.

158. The authorities have also made great efforts in training teachers about the Holocaust. Each year, in fact, a significant number of teachers attend courses at the Yad Vashem Holocaust Memorial Museum in Jerusalem. ECRI further notes that Romanian schools commemorate the Holocaust each year on October 9th and that a museum of the Holocaust, with free entry, has been opened in Northern Transylvania.

159. As has been mentioned in other sections of this report[102], the Holocaust has been denied in public many times by eminent figures without any legal action having been taken. In addition to the statement made by Senator Sova[103], ECRI has been informed that a number of university professors regularly deny the Holocaust in public. More recently, one of these professors denied the Holocaust before the Academy of Romania and was applauded. ECRI is very concerned that the authorities did not react though they were aware of the incident. It reminds the authorities that the criminal provision prohibiting the denial and the trivialisation of the Holocaust will be voided of its meaning if it is not applied even in the most blatant cases.

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[101] For instance, on 31 May 2012, a man who had committed a theft and was being pursued by the police was shot in the head after he had jumped in a lake and was swimming to escape. On complaints made against police officers see also paragraphs 187 and 188.

[102] See the section on the Existence and Application of Legal Provisions, subsection Criminal law provisions and the section on Climate of Opinion and Racism in Public Discourse.

[103] See footnote 57 of this report. Senator Dan Sova later stated he had not intended "denying the suffering of the Jewish people or the responsibility of the Romanian authorities of the time", Agence France Presse 7 March 2012.

160. In its third report, ECRI also urged the Romanian authorities to apply the law to all those who continue to foster the cult of persons who took an active part in the Holocaust and to waive the immunity granted to those who are still alive so that they may be tried.

161. Reports indicate that in 2010 Romania's National Bank (BNR) issued a commemorative coin depicting Patriarch Miron Cristea, who led the Romanian Orthodox Church between 1925 and 1939 and was Prime Minister from 1938 to 1939. Under his government approximately 225 000 Jews were stripped of their Romanian citizenship. Many organisations have urged the BNR to withdraw the coin; however, the bank has not, arguing that it was part of a collectors' series celebrating the Orthodox Church's 125th anniversary. The Orthodox Church supported the BNR.

162. ECRI further notes that on 13 November 2010, during a talk show on national television, a well-known journalist praised and defined Corneliu Zelea Codreanu[104], the founder of the legionary movement[105] as "the most honest and honourable Romanian politician from the interwar period". On 9 December 2010, NAC reprimanded the channel for having violated the principle of providing plurality of opinions[106]. ECRI considers that this measure does not address the racist and antisemitic implications of the statement made, nor does it discourage persons from fostering the cult of persons who have committed criminal offences against peace and humanity or who have promoted fascist, racist or xenophobic ideas by using propaganda (Article 5 of GEO No. 31/2002). In this connection, ECRI refers to its recommendation in paragraph 36 of this report.

Other religious minorities

163. Reports indicate that minority religious groups are frequently faced with unjustified refusals from the local authorities in relation to the granting of construction permits for places of worship. For instance, the Greek Catholic Church has been refused a construction permit for a new church in Sapinta (Maramures County) where the local parish bought land in 2003; the Baptist and Adventist churches have reported similar cases in Bucharest and Bursuceni (Suceava County) respectively.

164. Furthermore, under Law No. 489/2006 on Religious Freedom and the General Regime of Denominations, local authorities are required to construct a public cemetery with specific allotments for religious denominations present in that area (if there is such a request). Moreover, under the law, should no public cemetery exist in the area and the relevant religious denomination not have its own cemetery, the deceased not belonging to the Orthodox Church may be buried in a confessional cemetery according to his/her faith. Notwithstanding the above, ECRI has been informed by representatives of minority religious groups that it is not infrequent for the Orthodox Church to hinder the burial of persons of other religious denominations in public cemeteries in accordance with their religious rites. ECRI further notes that the law does not address the burial of persons

[104] Please see in this connection footnote 26 of this report. Corneliu Zelea Codreanu began openly calling for the killing of Jews and, as early as 1927, his newly founded movement organised the sacking and burning of a synagogue in the city of Oradea.

[105] See the section on Existence and Application of Legal Provisions, subsection Criminal law provisions, footnote 26.

[106] Notably for breach of Article 66 of the Code of Regulations for Audiovisual Content under which:
"(1) In news and debates programmes, the information regarding public interest issues, with political, economic, social and cultural character shall observe the following principles:
a) to ensure fairness, equilibrium and to encourage free formation of opinions by presenting the main opposite viewpoints during the period of public debate over certain issues; […]."

belonging to religious groups or religious associations, in accordance with their faith. The national authorities have informed ECRI that further to Romania's administrative decentralisation, local authorities are solely responsible for burial land. ECRI notes however, that the national authorities should maintain an oversight on such a delicate and important issue, in order to ensure that minority religious groups are not discriminated against in such a delicate field such as the burial of the deceased.

165. ECRI recommends that the Romanian authorities amend the law and monitor its applications so as to ensure that deceased persons belonging to all religious denominations, religious groups and religious associations can be buried in practice according to their own religious rite.

Hungarian community

166. The Hungarian community is the largest national/ethnic minority in Romania and represents 6% of the population of the country[107]. ECRI further notes that it is the only national/ethnic community which is represented by an ethnic/national minority organisation (the Democratic Alliance of Hungarians) and which is present in both chambers of the Parliament.

167. In addition to what has already been mentioned in the section on Climate of Opinion and Racism in Public Discourse, ECRI notes that two issues are at the heart of the growing tensions which have characterised the relations between the majority population and this minority. The first concerns the planned constitutional and administrative reform which aims to reorganise the counties in eight administrative regions. ECRI has been informed that the Hungarian minority fears that this will dilute their representation in the new regions and that these will not coincide with the cultural "borders". The second issue refers to the growing demand from the Covasna and Hargita counties for greater regional autonomy, which has at times been interpreted by the national authorities as a wish to secede from Romania. These two issues are at the backdrop of two incidents which have attracted sensational media reporting and have exacerbated the tension between Romania, Hungary and the Hungarian minority living in Romania.

168. The first incident relates to the hoisting of the Szekler flag in a number of town halls in Covasna and Harghita counties. This triggered both a legal and political reaction, whereby, respectively, the prefect of Covasna County lodged a number of complaints before courts against the mayors who had hoisted the flag, and Romanian officials in Covasna and Harghita counties banned the hoisting of the flag on office buildings[108]. In this connection, ECRI has been informed that other counties in Romania may display their symbols (including their flags)[109]. The State Secretary of Hungary's Ministry of Foreign Affairs declared in a statement that national/ethnic Hungarians from the above-mentioned region were subjected to a symbolic aggression and invited mayors of Hungarian ethnicity to hoist the Szekler flag in their towns. An exchange of strong statements between the Romanian and Hungarian authorities followed this incident, aggravating tensions.

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[107] Most persons who identify themselves as being of Hungarian ethnic origin live in three counties in Transylvania (also called Szekler land; these are the Covasna and Hargita counties and part of the Mures county); in the first two they represent 80% of the population. The Hungarian community living in these counties has a strong cultural identity. The Szekler land has existed as a legal entity from medieval times until the Austro-Hungarian Compromise of 1867 and became a part of Romania in 1920. Since medieval times it has had its own flag and heraldic symbol.

[108] A court fined the mayor of the village of Csikmadaras 9 000 lei (approximately 2 000 €) for not removing the flag. Agerpres release of 12 November 2013.

[109] Furthermore, in November 2012 a county court in Covasna ruled that the Szekler flag could be hoisted on public buildings.

169. The second incident concerns the wearing of a headband with the national colours of Romania by several pupils in a school in the county of Covasna, on the national day of Hungary. The teacher of the class asked the pupils to remove the headband and this led to an escalation of protests in various towns and the burning of the Hungarian flag. Further to this incident, a group on Facebook was formed inciting violence towards Hungarians; at the same time, one of the pupils who wore the symbol received a death threat. In addition to launching an investigation concerning the death threat, the authorities carried out an investigation into the conduct of the school and reprimanded the headmaster and dismissed the teacher who had banned the wearing of the symbol. The national authorities explained these measures by stating that national and local symbols must be respected. ECRI notes that in this respect there is an inconsistency between the reaction of the authorities in the first and the second incident; whereas in the first incident the authorities banned the display of local symbols, in the second incident they safeguarded the right to display national symbols. ECRI deems that this incongruence should be remedied in order to ensure that there is no discrimination on grounds of ethnic origin in this field. ECRI has also been informed about issues concerning the use of minority languages. ECRI considers these can be best addressed under the Framework Convention for the protection of National Minorities and the European Charter for Regional or Minority Languages. More generally, ECRI is concerned about the tensions between the population belonging to the majority and ethnic Hungarians.

170. ECRI recommends that the authorities appease tensions between the majority population and ethnic minorities, foster a climate of tolerance and take action when racist discourse is used. ECRI also recommends that the authorities ensure that the principle of equal treatment is applied as concerns the display and use of national and regional symbols and to remedy any breach thereof.

Asylum Seekers and Refugees

171. In its third report, ECRI recommended that the Romanian authorities ensure that a consistent body of legislation on the protection of asylum seekers and refugees be in place. It recommended in particular that: unaccompanied minors who have been granted refugee status be entitled to family reunification on the same footing as adults; persons who have received refugee or "humanitarian" status or status as a "tolerated" person fully enjoy the rights granted to them by Law No. 176 and be provided, inter alia, with free Romanian language courses and integration programmes in the field of employment.

172. ECRI notes that the legal framework on the protection of asylum seekers and refugees (and persons who have been granted other forms of protection[110]) has been amended.[111] More specifically, the Law on Asylum now explicitly provides for a number of safeguards, notably: unhindered access to the asylum procedure, the principles of non-discrimination and non-refoulement, family unity, the best interest of the child, and the non-penalisation of unauthorised entry,[112] as well as specific guarantees applicable to unaccompanied minors seeking asylum. As a result of these amendments, the law now provides for family reunification of unaccompanied minors in accordance with the best interest of the child.

[110] Under Article 2 on the Law on Asylum, a form of protection is any form of protection granted by the Romanian state, namely: refugee status, subsidiary protection, temporary protection or temporary humanitarian protection.

[111] Notably, further to the entry into force of: Law No. 122/2006 (Law on Asylum) and Government Decision No. 1251/2006 on asylum; the 2011 amendments of Government Ordinance No. 44/2004 regarding the integration of foreigners (Ordinance on Integration); and the 2011 amendments to Emergency Ordinance No. 194/2002 on the status of aliens (Ordinance on Aliens).

[112] Under Article 11, Romanian authorities will not apply criminal sanctions for illegal entry or residence to asylum seekers who enter or reside on the territory of Romania without an authorisation.

Furthermore, the Law on Aliens has broadened the spectrum of persons considered as family members for the purpose of family reunification.

173. As concerns the integration of the above-mentioned categories of persons, the Ordinance on Integration now grants the following rights to persons who have been given a form of protection in Romania: the right to employment, access to housing, education, access to medical and social assistance on equal footing with Romanian citizens. The Ordinance on Integration provides that an individual integration programme may be entered into upon the request of the beneficiary of a form of protection with the Romanian Immigration Office for a period of six months. Under this programme the individual undertakes, inter alia, to attend Romanian language classes, cultural orientation sessions and psychological and social counselling. ECRI commends these positive developments; it has been informed however that many times the integration programmes are not fully monitored nor implemented; that effective access to employment and housing remains cumbersome; and that the decentralisation process has brought some confusion as to which county is to be considered responsible for the integration of a refugee, asylum seeker or a beneficiary of another form of protection.

174. As concerns persons who have a tolerated status[113], ECRI has been informed that they now have access to the employment market. The fact that employers are not aware about this category's right to be employed has also been brought to ECRI's attention.

175. ECRI recommends that the Romanian authorities ensure that the integration programmes entered into by refugees and persons who have been granted other forms of protection are fully implemented and that their integration into society is monitored. It further recommends that the effective exercise of the right to employment and access to housing be facilitated through specific measures targeting, inter alia, employers and the housing sector.

176. In its third report, ECRI urged the Romanian not to build detention centres for asylum seekers. It also urged them to close the centre for unaccompanied minors which had been recently built at the Bucharest airport without delay. Pending the closure of this centre, ECRI recommended that the Romanian authorities receive minors there in full compliance with the Geneva Convention and the UN Convention on the Rights of the Child, and allow the UNHCR and the Red Cross unrestricted access to the centre. Furthermore, it urged the Romanian authorities to repeal the legal provisions authorising detention for an indeterminate period for persons who are the subject of a deportation order or have been declared persona non grata.

177. ECRI has been informed by the authorities that if a person lodges an asylum application while in detention, s/he is immediately released[114]; furthermore, entry without an authorisation into Romanian territory is not considered an offence. Asylum seekers are therefore primarily lodged in one of the six open reception centres. ECRI is also pleased that unaccompanied minors, whether asylum seekers or minors in an irregular situation, are not detained and are accommodated in a Child Protection Centre. As concerns the detention of persons subject to a deportation order, the legal framework has now been harmonised with the acquis communautaire. As a result, a maximum 18-month

[113] Under Article 102 of the Law on Aliens, toleration of stay on the territory of Romania is the permission to stay on the territory of the country granted by the Romanian Migration Office to an alien who does not have a right to reside and who does not leave the territory of Romania for objective reasons. The following are understood as objective reasons: circumstances which are independent of the alien's will, which cannot be foreseen and removed and which hinder the alien from leaving the territory of Romania.

[114] Unless they are considered a risk to the country or they have committed a crime.

period of detention has been introduced, including in cases in which a person is considered undesirable for reasons of national security.

178. In its third report, ECRI recommended that the authorities continue to provide the border police and all public officials required to deal with asylum seekers and refugees with training courses on the 1951 Geneva Convention and the relevant legislation. It also recommended that they provide the National Office for Refugees with the necessary funds and staffing to carry out its tasks.

179. ECRI has been informed by the authorities that courses on international law on refugees are part of the curriculum of the Romanian Border Police and that this issue is addressed yearly during summer schools organised in partnership with the UNHCR. Furthermore, the Border Police and the UNHCR have entered into a Memorandum of Understanding concerning asylum seekers' access to Romanian territory and the asylum procedure. Romania has also implemented the UNHCR's programme aimed at improving the quality of the asylum procedure[115]. Finally, ECRI has been informed that the staff of the General Inspectorate for Immigration (comprising the former National Office for Refugees) has been increased, including the number of persons who issue the first instance decision on the asylum application.

180. In its third report, ECRI recommended that the Romanian authorities amend the legislation on asylum seekers to give the latter enough time to submit their applications and to lodge any appeal against a negative decision.

181. Concerning the deadline for appealing, ECRI regrets that the situation described in paragraph 89 of ECRI's third report has remained unchanged.

182. ECRI reiterates its recommendation to the Romanian authorities that they lengthen the deadline by which an appeal against a negative decision on an asylum application must be submitted.

VI. Monitoring Racism and Racial Discrimination

183. In its third report, ECRI recommended that the Romanian authorities establish a comprehensive system for the collection of data so as to be able to assess the scale of direct and indirect discrimination of minority groups in Romania in various fields of life. In this connection, it recommended that: the data be broken down by categories such as national or ethnic origin, religion, language and nationality; and the collection of such data be performed in accordance with the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. It further recommended that this system take into consideration the possible existence of cases of double or multiple discrimination.

184. ECRI regrets that there is no comprehensive system for the collection of data for the purposes of assessing the situation of groups of concern to ECRI. ECRI notes that whereas under Article 7(1) of Law No. 677/2001 (on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data), the processing of personal data regarding, inter alia, ethnic or "racial origin" or religious affiliation is prohibited, under Article 7(2) such processing is allowed if it serves a public interest[116].

[115] This programme is called ASQAEM, Asylum Systems Quality Assurance and Evaluation Mechanism.

[116] For instance " a) when the subject has expressly given his/her consent for such data processing; [….] h) where there is a specific legal provision, regarding the protection of an important public interest, on the condition that the processing is carried out in compliance with the rights of the data subject and other legal guarantees provided by the present law".

185. ECRI reiterates its recommendation to the Romanian authorities to establish a comprehensive system for the collection of data so as to be able to assess the scale of direct and indirect discrimination of groups of concern to ECRI in various fields of life in Romania. In this connection, it recommended that: the data be disaggregated according to the categories of national/ethnic origin, religion, language and citizenship; and the collection of such data be performed in accordance with the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. It further recommends that this system take into consideration the possible existence of cases of double or multiple discrimination.

VII. Conduct of Law-Enforcement Officials

186. In its third report, ECRI urged the Romanian authorities to provide police officers and law-enforcement officials with regular training in the legislation on discrimination. ECRI notes that this issue has already been addressed in the section on the Existence and Application of Legal Provisions, subsections Civil and administrative law provisions and Anti-discrimination bodies and other institutions.

187. In its third report, ECRI also recommended that the Romanian authorities: set up an institution responsible for ensuring compliance with the principles of non-discrimination included in the Code of Professional Conduct for Police Officers and in Law No. 7/2004 on the Code of Conduct for Public Officials; and they conduct enquiries to establish why no complaints of discrimination have been lodged against police officers or law-enforcement officials.

188. ECRI has been informed that, other than the approval in 2005 of a new Code of Ethics and Conduct for Police Officers, no significant steps have been taken to ensure compliance with the principle of non-discrimination included in the current and previous code, or to enquire as to the reasons why no complaints have been lodged against police officers. More specifically, to this day, Romania does not have an independent body responsible for looking into complaints made against police officers or law-enforcement officials; these are handled by the police itself or by the Ministry of Internal Affairs.

189. ECRI strongly recommends the Romanian authorities to set up an independent mechanism for dealing with complaints against the police. This would deal, inter alia, with issues of racial discrimination and enquire as to the reasons why no complaints have been lodged against police officers.

190. In its third report, ECRI recommended that the Romanian authorities frame a policy for recruiting members of the Roma community into the police force in order, inter alia, to facilitate mutual communication and relations.

191. As of June 2012, the following officers belonging to a national/ethnic minority were employed by the police: 369 persons of Hungarian and 113 persons of Roma origin. ECRI is pleased to note that since its third report, the Romanian authorities have carried out campaigns targeted at recruiting members of national/ethnic minorities in the police force[117]. In February 2010, the Romanian authorities also commissioned a study to assess the integration of such persons in the police force. Moreover, a number of places within the various police academies in the country have been earmarked for representatives of national/ethnic minorities, in particular the Roma. In 2011, eight such places were earmarked for recruits of Roma origin. In the light of the number of violent racist

[117] These include, inter alia, the following campaigns : Mission Possible – Equal Chances in the Choice of a Career (2010) ; Mission Possible – Police Officers in a Multicultural Community (2011).

incidents involving the police and the Roma community, ECRI considers that the number of such priority seats should be increased; Roma police officers may in fact prove to be a precious resource in order to avoid the escalation of violence between the police and the Roma community.

192. ECRI recommends that the Romanian authorities intensify their efforts to recruit members of the Roma community into the police force in order to, inter alia, facilitate mutual communication and relations.

VIII. Education and Awareness Raising

193. In its third report, ECRI urged the Romanian authorities to draw up a school curriculum which reflects Romania's cultural diversity and teaches about minority groups' contributions to the country's history. It also recommended that all derogatory references to minority groups should be deleted from school textbooks.

194. Article 46 (10) of the new law on national education of 2011 provides that the history curricula and textbooks shall reflect the history and traditions of the national minorities in Romania. Indeed, ECRI has been informed by the authorities that in 2009 two optional classes have been introduced in the Romanian school curriculum, intercultural education and history of national minorities in respectively, lower and upper secondary school[118]. Furthermore, a textbook on the history and culture of the Roma was published in 2007. ECRI welcomes these developments and encourages the authorities to integrate these topics within the mandatory course of history at all levels of education. As concerns the issue of derogatory references to national/ethnic/religious minority groups, reports have indicated that a textbook on the Orthodox religion published in 2006 by the Ministry of Education and the State Secretariat for Religious Denominations described in pejorative and discriminatory terms a number of religious denominations. For this reason, reports indicate that the Bahais have taken legal action against the ministry of education and the competent state secretary. As a consequence, the textbook was withdrawn from the schools and the market, its text was reviewed and it was reprinted.

195. ECRI recommends that the Romanian authorities integrate the history of national/ethnic minorities, including Roma, within the mandatory course of history at all levels of education.

196. ECRI reiterates its recommendation that the Romanian authorities ensure that all derogatory references to vulnerable groups should be deleted from school textbooks.

197. In its third report, ECRI called on the Romanian authorities to include issues relating to respect for cultural diversity in the teacher training programme. It also recommended that they prepare teachers better for teaching children from different cultural backgrounds.

198. In addition to the teacher-training courses already mentioned in this report in other sections, in 2007 and 2008 around 500 teachers attended training sessions on Roma culture and history. Furthermore the NCCD, together with the Ministry of Education organised in 2008 and 2009 training courses on the promotion of non-discrimination and human rights.

[118] The school in Romania is divided in primary education, which lasts four years and is for pupils aged six to ten; lower Secondary education, which encompasses grades five to ten and is for pupils aged ten to 16; and upper secondary education for grades 11 to 13, for pupils of ages 16 to 19.

199. Awareness-raising activities on the fight against discrimination have been discussed in various sections of this report.[119]

[119] See the section on the Existence and Application of Legal Provisions, subsection Anti-discrimination bodies and other institutions (paragraph 54 et seq.) and the section on Discrimination in Various Fields, sub-section Education (paragraph 116 et seq.).

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations, for which ECRI requests priority implementation from the authorities of Romania, are the following:

- To conduct campaigns informing the general public about the criminal law provisions concerning the fight against racism and that information is provided to victims on the bodies which are competent to provide assistance and/or redress.

- To devise a comprehensive data collection system on the application of criminal law provisions against racism and racial discrimination. Such a system should record the number of investigations opened by the police, the cases referred to the prosecutor, the number of cases pending before court and their final decisions, broken down per reference year and per relevant criminal law provision.

- To ensure that sufficient funds are allocated and a strong impetus is given to the Strategy for Improving the Situation of the Roma; to ensure coordination between the ministries; and to guarantee the accountability of the local authorities to the central authorities in implementing the Strategy.

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

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