



**ECRI REPORT ON  
BOSNIA AND HERZEGOVINA**

**(fourth monitoring cycle)**

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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 as of 25 June 2010 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 Bosnia and Herzegovina on 15 February 2005, progress has been made in a number of fields covered by that report.**

The Election Law has been amended to allow for greater direct participation of minority groups in public life. The authorities have also presented to parliament a Bill to Ban All Fascist and Neo-Fascist Organisations and the Use of their Symbols. The War Crimes Chamber of the Court of Bosnia and Herzegovina and Special Department for War Crimes of the Prosecutor's Office of Bosnia and Herzegovina have been established. The Council of Ministers has adopted a National War Crimes Strategy intended to provide a systematic approach for dealing with the large volume of war crimes cases.

The Law on the Prevention of All Forms of Discrimination, covering a broad range of grounds, sectors of activity and actors, came into force on 6 August 2009. Legislation providing for the full transfer of the Entity Ombudsmen's competences to the State level has now been enacted and crucial responsibilities in the field of combating racial discrimination have been transferred to the Human Rights Ombudsman at State level.

Four Framework Laws on education have been enacted at State level since ECRI's first report, as well as a number of implementing laws at Entity level and in the Brčko District. Guidelines have been developed for producing geography and history textbooks and the Brčko District has taken steps to teach children using different official languages more parts of the curriculum together. Education for Democracy and Human Rights is a compulsory subject and a curriculum to mainstream education for peace was due to be introduced in all schools in September 2009.

As regards social rights, progress has been made in processing claims for unfair war dismissals and some measures have been taken at Entity level to facilitate the health insurance registration of refugees, returnees and displaced persons.

Considerable resources have been devoted to the return and reconstruction of property and today, most claims for the return of property have been processed. The number of violent attacks against returnees has declined in recent years. The House of Peoples moreover adopted a Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement (Agreement on Refugees and Displaced Persons) on 24 June 2010.

The authorities have launched a process of civil registration of Roma. Bosnia and Herzegovina has also joined the Decade of Roma Inclusion. In complement to the 2004 Action Plan on the Educational Needs of Roma and Members of Other National Minorities, an Action Plan for Addressing Roma Issues in the Fields of Employment, Housing and Health Care has been drawn up. Efforts are being made to address these issues holistically, including through the collection of necessary data, the examination of necessary changes to legislation and regulations, concrete measures to achieve progress in practice and awareness-raising measures to change attitudes both amongst the majority population and amongst Roma. Measures are in place to distribute schoolbooks free of charge and to provide financial support to Roma children who progress to secondary and higher education, and enrolment rates of Roma children in schools are gradually increasing. The Advisory Board on Roma and the Council of National Minorities have been involved in these processes.

Legislation necessary to implement in practice the principles of the Law on Protection of Rights of Persons belonging to National Minorities has been adopted at Entity level. The Council of National Minorities at the State level, the Council of National Minorities within the parliament of the Republika Srpska and its equivalent in the Federation of Bosnia and Herzegovina have now been established. Amendments have also been

made to the State Law on National Minorities to relax the criteria for opening classes providing teaching in or of minority languages, although the criteria reportedly remain difficult to fulfil in practice and the number of such classes remains low.

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

Following the judgment of the European Court of Human Rights in the case of *Sejdić and Finci*, finding that the maintenance in place of constitutional arrangements that exclude persons who do not consider themselves as belonging to a constituent people from standing for election to the Presidency or the House of Peoples at the level of the State is in breach of the prohibition on discrimination, the Working Group set up to draft constitutional and other amendments was unable to agree on a way forward in time for amendments to be made before the next elections. As a result, individuals will continue to suffer violations of their right to be free of discrimination on ethnic grounds.

As regards reserved seats for national minorities in municipal councils, few municipalities meet the 3% threshold laid down by law. Difficulties in exercising the right to run as national minority candidates in the 2008 municipal elections were reported, even where the threshold was met. Moreover, with no seats in the working group set up following the *Sejdić and Finci* judgment, minorities have little opportunity to influence the outcome of these discussions. There have also been problems appointing national minority representatives to the Council of National Minorities.

Under the Law on the Prevention of All Forms of Discrimination, religious groups are granted broad exemptions from the obligation of equal treatment, notably in the field of employment, and the law may be open to abuse on this point. There are reports that neither judges and prosecutors nor lawyers are yet sufficiently familiar with the Law to be able to apply it confidently in practice. At the same time, efforts to increase the diversity of the judiciary have not proved very effective.

Political parties continue to exploit virulent nationalistic rhetoric arguments in their discourse, fostering divisions between the various constituent peoples and ethnic groups living in Bosnia and Herzegovina. High-level political leaders not only do not condemn such discourse, but engage in it themselves. At the same time, local politicians appear to have been able to engage in ethnically biased acts with impunity. There are also reports that hate speech in the media is on the rise.

There have been cases of incitement to racial or religious hatred, discord or hostility. Religious sites and property of all three official faiths have been the subjects of violent attacks and police officers and local politicians have at times minimised such incidents.

Children of different ethnic backgrounds continue to attend different schools in Bosnia and Herzegovina. Monoethnic schools are reported to exist and cases of “two schools under one roof” persist. The translation into practice of the agreement on the common core curriculum has been uneven and there are reports that textbooks still display ethnic bias and that schools do not always provide a neutral learning environment.

Minority returnees continue to face discrimination in all areas of daily life, including difficulties in access to health care, pensions and other forms of social protection. Some health care centres employ essentially monoethnic staff and display ethnically divisive symbols. The rules governing pension entitlements also have a discriminatory impact on essentially ethnic grounds on some persons who have already made the choice to return, and act as an obstacle to displaced persons seeking to return. Minority returnees also experience difficulty in accessing both public and private sector employment. The rate of returns has moreover slowed down considerably in recent years. Isolated violent attacks against individuals, as well as virulent, ethnically divisive political discourse in some areas, continue to create a climate of hostility and to



contribute to a sense of intimidation and rejection of minority returnees. Such difficulties moreover deter other displaced persons and refugees from returning.

Roma experience extreme poverty and marginalisation, compounded by prejudice and discrimination. Many Roma continue to live in informal settlements, which frequently lack access to basic utilities, and forced evictions continue to occur. Roma participation rates at school remain very low overall, Roma children are still less likely than other children to attend or complete school, and drop-out and illiteracy rates remain high. Hostile attitudes from some local authorities and communities continue to be reported. The absence of a formal mechanism to establish statelessness also impacts on Roma.

Asylum applicants from Kosovo are regularly rejected, exposing persons entitled to international protection to a risk of refoulement. Refugees have no access to facilitated naturalisation and little is done to facilitate asylum-seekers' and refugees' integration.

There have been reports of problems with police treatment of Roma and other visible minorities, including ethnic profiling practices. Police and prosecutors have also been reported to be reluctant to investigate crimes against national and religious minorities. There has been little progress in establishing an independent police complaints investigation mechanism or in ensuring the ethnic diversity of the police.

There are no figures more recent than those of the 1991 census that could help to design measures adapted to ensuring the equality in practice of all members of society.

Finally, ethnic origins continue to have a strong link to both the entitlement to and the enjoyment of certain rights in present-day Bosnia and Herzegovina. Persons who do not identify with one of the three constituent peoples are ignored in power-sharing mechanisms and other policies and programmes implemented to ensure an institutional balance between constituent peoples. They are still in a position of serious disadvantage and are, in many cases, victims of ethnic discrimination. This situation promotes the persistence of a society in which communities are divided along ethnic lines and serves to favour all the more those political parties that rely on nationalistic rhetoric to garner support.

**In this report, ECRI recommends that the authorities of Bosnia and Herzegovina take further action in a number of areas.**

ECRI strongly urges the authorities to align the Constitution and the provisions of electoral law with the requirements of the European Convention on Human Rights. It invites them to take all necessary measures to ensure that national minorities enjoy a real and effective right to representation in elected bodies at local level, and to resolve all outstanding issues with respect to advisory bodies on national minorities, so as to allow the latter to participate in and have an influence on public life at all levels.

ECRI strongly recommends that the authorities of Bosnia and Herzegovina provide judges and prosecutors with initial and on-going training, as a matter of priority, on the Law on the Prevention of All Forms of Discrimination in particular and on issues pertaining to racial discrimination in general. It also recommends that training be offered to lawyers on the Law and on issues pertaining to racial discrimination more generally. It underlines that in line with the definitions of direct and indirect discrimination set out by ECRI in its General Policy Recommendation No. 7, this training should cover grounds such as "race", colour, language, religion, nationality or national or ethnic origin.\*

ECRI recommends that the authorities monitor the impact in practice of the Law on the Prevention of All Forms of Discrimination, and amend it as necessary to ensure that it

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\* 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.

provides real and effective protection against all forms of racial discrimination. ECRI strongly recommends that the authorities make sufficient financial and human resources available to enable the Human Rights Ombudsman to carry out effectively all the tasks assigned to it in the field of combating racial discrimination.

ECRI urges the authorities to bring to justice all persons responsible for war crimes, crimes against humanity and genocide committed during the war. It also recommends strengthening efforts to ensure diversity in the criminal justice system.

ECRI strongly urges political leaders at all levels to break out of the spiral of nationalist discourse. It strongly urges the authorities to take ad hoc measures targeting the use of ethnically inflammatory discourse by political leaders.

ECRI urges the authorities to take a series of measures to combat racial discrimination and segregation in the fields of education, employment, housing and health.

ECRI urges the authorities to bring to completion as a matter of priority their work to resolve all remaining cases of “two schools under one roof”. It emphasises that in so doing, the authorities should ensure not only that these schools are unified administratively but also that pupils are taught together wherever possible.\*

ECRI urges the authorities to put an end to instances of discrimination on ethnic grounds in the field of pension entitlements, and to take all the necessary legislative steps to ensure that new, similar cases do not arise in future.\*

ECRI recommends that the authorities remove the remaining obstacles to return, and to this end, recommends that they take a series of measures to put an end to discrimination against minority returnees. It encourages the authorities to adopt as soon as possible the Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement.

ECRI recommends that the authorities take a series of measures to combat racism and racial discrimination against Roma in all fields of daily life. It recommends that they monitor and evaluate carefully the impact of the measures included in the Action Plans for Roma, with the full involvement of Roma representatives, in order to be able to adapt the Action Plans where necessary and share best practices rapidly.

ECRI recommends that the authorities take a number of measures to counter discrimination against asylum-seekers and refugees.

ECRI recommends that the authorities take all necessary steps to put an end to racial profiling. It encourages them to consider establishing an independent body entrusted with the investigation of all allegations of ill-treatment by police officers and to intensify their efforts to ensure ethnic diversity of the police. It recommends that all incidents of alleged racist violence be thoroughly and promptly investigated so as to ensure that the perpetrators of criminal acts are brought to justice.

ECRI recommends that ways of measuring the current situation of minority groups in different fields of life be identified, including in the context of the next census. It emphasises that the collection of such data must be carried out with due respect to the principles of confidentiality, informed consent and voluntary self-identification.

ECRI urges the authorities to ensure that all persons within the jurisdiction of Bosnia and Herzegovina enjoy not only by law but also in fact, all the rights laid down by law, regardless of their ethnic origins. It urges the authorities as well as political leaders at all levels to seek solutions in the long-term interests of all persons living in Bosnia and Herzegovina, based on the recognition of equal democratic citizenship of all.

## FINDINGS AND RECOMMENDATIONS

### I. Existence and Implementation of Legal Provisions

#### International legal instruments

1. Bosnia is a party to Protocol No. 12 to the European Convention on Human Rights. As regards other relevant international instruments, in its first report on Bosnia and Herzegovina, ECRI recommended that Bosnia and Herzegovina ratify the European Social Charter (Revised), the European Charter for Regional or Minority Languages, the Convention on Cybercrime and its Additional Protocol, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, the European Convention on Nationality and the Convention for the Participation of Foreigners in Public Life at Local Level.
2. ECRI welcomes the fact that since its report, Bosnia and Herzegovina has ratified a number of international instruments that may have an important impact on the fight against racism and related forms of intolerance, namely the European Social Charter (Revised), the European Convention on Nationality, the Convention on Cybercrime and its Additional Protocol, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems and the European Charter for Regional or Minority Languages.<sup>1</sup> However, to date Bosnia and Herzegovina has not ratified the Convention for the Participation of Foreigners in Public Life at Local Level. ECRI underlines that this instrument may make an important contribution to the fight against racism and related forms of intolerance, by helping to eliminate obstacles to the full participation of all persons in the society to which they belong.
3. In its first report on Bosnia and Herzegovina, ECRI also recommended that Bosnia and Herzegovina make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, recognising the competence of the Committee for the Elimination of Racial Discrimination to receive and consider communications from individuals and groups of individuals alleging violations by the State of any of the rights set out in the Convention. No such declaration has yet been made although ECRI has received some indications that the authorities may be ready to consider taking such a step. ECRI notes that Bosnia and Herzegovina has already given all persons under its jurisdiction the possibility of complaining of discrimination at international level, through its ratification of Protocol No. 12 to the European Convention on Human Rights. In ECRI's view, making the Article 14 declaration should thus be seen as a complementary step for which there should not be any major legal or practical obstacles.
4. ECRI again recommends that Bosnia and Herzegovina ratify the Convention for the Participation of Foreigners in Public Life at Local Level and that it make the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, empowering the Committee for the Elimination of Racial Discrimination to receive and consider individual communications.

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<sup>1</sup> These instruments came into force for Bosnia and Herzegovina as follows: Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems: 1 September 2006; European Social Charter (Revised): 1 December 2008; European Convention on Nationality: 1 February 2009. Bosnia and Herzegovina ratified the European Charter for Regional or Minority Languages on 21 September 2010 and it will come into force for Bosnia and Herzegovina on 1 January 2011.

## **Constitutional law and electoral law provisions governing elections at State level**

5. As noted in ECRI's first report, the Constitution of Bosnia and Herzegovina, adopted as Annex IV to the Dayton Peace Agreement (concluded in 1995 to end the war), defines Bosniacs, Croats and Serbs as constituent peoples (along with "Others") of Bosnia and Herzegovina. In accordance with the findings of the Constitutional Court, Bosniacs, Croats and Serbs are considered as constituent peoples throughout the territory of Bosnia and Herzegovina, irrespective of the Entity in which they reside.<sup>2</sup> Various arrangements set up under both the State Constitution and the Constitutions of the Entities as well as by law allocate specific numbers of seats in Parliament to different ethnic groups. Additional provisions governing various other positions involving the exercise of public authority (including, for example, the Presidency of the State and the office of Ombudsman) establish ethnic power-sharing mechanisms between the three constituent peoples. Provision is sometimes, but not always, made for "Others" to participate in such institutions. The impact in practice of these provisions is examined in more depth elsewhere in this report.<sup>3</sup>
6. In its first report, ECRI considered that the ethnically discriminatory nature of certain constitutional arrangements, reserving some public positions to persons belonging to specific ethnic groups, would have to be addressed. It encouraged the authorities of Bosnia and Herzegovina to promote public debate in the area of State-level constitutional revision and to ensure the involvement in such debate of all groups composing the society of Bosnia and Herzegovina, in order to ensure that constitutional arrangements allow for participation of all in public life and do not impact in a discriminatory manner on any minority group.
7. Since ECRI's report, debates about possible constitutional reforms have continued. At the same time, the European Court of Human Rights has been called upon to examine two applications, lodged by a Roma and a Jew, concerning their exclusion from standing as candidates for the Presidency and for membership of the House of Peoples at the level of the State. This exclusion arose from the provisions of constitutional and electoral law governing the direct elections for the State Presidency and indirect elections, through the Entity parliaments, of delegates to the House of Peoples at the level of the State. In both cases, ethnic grounds preclude some persons from standing for election: only Bosniacs and Croats can be elected to these functions from the territory of the Federation of Bosnia and Herzegovina (but not Serbs or "Others"), and only Serbs can be elected from the territory of the Republika Srpska (but not Bosniacs, Croats or "Others"). Thus, all persons who do not consider themselves as having an ethnic affiliation with a single constituent people, and all persons belonging to a constituent people but who do not live in the Entity where they are more numerous, are excluded from running as candidates in these elections. In December 2009, the Court found that while these provisions – included as part of the power-sharing arrangements agreed upon in the 1995 Dayton Peace Agreement – had pursued the legitimate aim when they were adopted of ensuring peace, the maintenance in place of such exclusions could no longer be considered proportionate to this aim. The continued ineligibility of the applicants was therefore found to be in breach of the prohibition on discrimination.<sup>4</sup>
8. ECRI deeply regrets that the Working Group set up in Bosnia and Herzegovina in March 2010 in response to this judgment, to draft constitutional and other amendments so as to eliminate such violations for the future, was unable to

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<sup>2</sup> Partial decision of 30 June and 1 July 2000 of the Constitutional Court, U 5/ 98 III.

<sup>3</sup> See in particular below and Section X – The Need to Acknowledge Full Bosnian Democratic Citizenship.

<sup>4</sup> *Sejdić and Finci v. Bosnia and Herzegovina*, applications nos. 27996/06 and 34836/06, judgment of the European Court of Human Rights (GC), 22 December 2009

reach agreement on a way forward in time for the necessary amendments to be made before the next elections to the Presidency or the House of Peoples at the level of the State in October 2010. As a result, Roma, Jews, persons belonging to other national minorities and persons who do not consider themselves as belonging either to a constituent people or to a national minority will continue to suffer violations of their right to be free of discrimination on ethnic grounds. ECRI recognises that a number of important, complex and inter-related interests are at stake, revolving, first, around the right of all persons to participate effectively in public life, whether or not they identify themselves as belonging to a constituent people and irrespective of where in Bosnia and Herzegovina they live, and second, around the interest of constituent peoples in continuing, as such, to have an equal influence in public affairs. It emphasises that, while balancing the considerations at stake is by no means a simple task, the issues are not unfamiliar to political leaders in the country; moreover, a variety of proposals for new constitutional arrangements to resolve these problems have been on the table for several years. ECRI stresses the need to comply with the judgment of the European Court of Human Rights and to move forward rapidly towards a system in which no members of society are subject to discrimination on ethnic grounds with respect to their electoral rights.

9. ECRI strongly urges the authorities to align the Constitution of Bosnia and Herzegovina and the provisions of electoral law with the requirements of the European Convention on Human Rights, emphasising the need to avoid prolonging a situation in which the prohibition against discrimination on ethnic grounds is violated. ECRI urges all actors concerned to take a constructive approach, focusing on finding common ground from which to define an electoral system that is viable in the long term, and that, while ensuring the full equality of members of the three constituent peoples, does not reduce representation to a question solely or primarily of ethnic belonging but allows all members of society to participate fully in the electoral process.

#### **Provisions governing the political representation of persons belonging to national minorities<sup>5</sup>**

10. In its first report, ECRI urged the authorities of Bosnia and Herzegovina to ensure that effective mechanisms to ensure political representation of national minorities at all levels were in place and that the representatives of the national minorities were able to elect their representatives in the October 2004 local elections. ECRI notes with regret that the relevant amendments came into force too late to allow national minorities to elect representatives in the 2004 elections. In 2008, the Election Law of Bosnia and Herzegovina was again amended<sup>6</sup> to introduce new regulations concerning the election of candidates not identifying with one of the three constituent peoples. The amendments introduced two parallel electoral systems in each municipality: a proportional system for the election of candidates from the general population, and a first-past-the-post system for elections for seats reserved to national minorities. Under the new rules, where national minorities form more than 3% of the electorate, based on the last (1991) census figures, they are entitled to a representative in the relevant municipal assembly or council.
11. ECRI welcomes the introduction of the above positive measures, which should provide for greater direct participation of minority groups in public life. However, it notes that few municipalities meet the 3% threshold, a concern also expressed by

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<sup>5</sup> Outside the field of electoral law (examined below), the situation of persons belonging to national minorities is dealt with elsewhere in this report. See below, Vulnerable Groups – National minorities .

<sup>6</sup> Article 64 of the law amending the Electoral Law, which introduced amendments to Article 13.14 of the Electoral Law.

the Advisory Committee on the Framework Convention for the Protection of National Minorities.<sup>7</sup> Representatives of national minorities have also reported difficulties in exercising their right to run as national minority candidates in the 2008 municipal elections even where the threshold was met, due to unclear information from the Election Commission on the conditions for registering minority candidates, the fact that official election documents did not present national minority representatives as such but merely as independent candidates, and unclear ballot papers. Representatives of national minorities have also pointed out that they continue to be excluded from the possibility of standing for election to the Presidency and House of Peoples of Bosnia and Herzegovina, and, as no seats have been allocated to them in the committee set up to work on modifying the Constitution and electoral law in response to the *Sejdić and Finci* judgment, they have little opportunity to influence the outcome of these discussions.

12. ECRI recommends that the authorities of Bosnia and Herzegovina review both the impact in practice of the 3% threshold for reserved national minority seats in municipal assemblies and councils and the practical problems reported by representatives of national minorities in exercising their electoral rights in municipal elections. It invites the authorities to take all necessary measures, including at legislative level if necessary, to ensure that national minorities enjoy a real and effective right to representation in elected bodies at local level.
13. ECRI recommends that the authorities take all necessary measures to ensure that representatives of national minorities can participate directly not only in public debates but also in formal discussions on amendments to the State Constitution and electoral law.

### **Criminal law provisions against racism and racial discrimination<sup>8</sup>**

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14. In its first report, ECRI took note of the provisions of the Criminal Code of Bosnia and Herzegovina prohibiting discrimination by public officials and the restriction by public officials of the language rights of the citizens in their relations with the authorities, as well as the prevention of returns of refugees or displaced persons. It also took note of the provisions of the Criminal Codes at Entity level prohibiting discrimination by any individual on similar grounds; incitement to national, racial or religious hatred; restrictions of the right of citizens to use their language or alphabet; and prevention of returns. It drew attention to the full range of criminal law provisions that ECRI considers should feature in effective national legislation to combat the phenomena of racism and racial discrimination, as set out in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. It recommended that the authorities of Bosnia and Herzegovina keep the effectiveness of their criminal law provisions against racism and racial discrimination under review and that they complement them taking into account ECRI's General Policy Recommendation No. 7. It furthermore recommended that the law should explicitly provide that racist motivations constitute an aggravating circumstance in respect of all offences. ECRI notes that similar provisions to those described above also exist in the Brčko Criminal Code.
15. Since ECRI's report, the authorities have prepared and tabled in parliament a Bill on the Prohibition of Fascist and Neo-Fascist Organisations in Bosnia and

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<sup>7</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Bosnia and Herzegovina, 27 April 2009, ACFC/OP/II(2008)005, § 197.

<sup>8</sup> In line with the definitions set out in ECRI's General Recommendation No. 7 on national legislation to combat racism and racial discrimination, all references to these phenomena include grounds such as "race", colour, language, religion, nationality or national or ethnic origin.

Herzegovina, prohibiting the activities of such organisations within the territory of Bosnia and Herzegovina. However, the Bill drawn up in 2010 did not receive the necessary support in parliament and has therefore not been enacted. The authorities have indicated that new criminal legislation against cybercrime and Holocaust denial may be drawn up in 2010. ECRI understands that a revised Bill to Ban All Fascist and Neo-Fascist Organisations and the Use of their Symbols in Bosnia and Herzegovina was approved by the Council of Ministers in March 2010 and forwarded to the parliament, before which it remains pending. Amendments were also proposed to the Criminal Code of the Federation of Bosnia and Herzegovina in 2009 to strengthen the provisions against hate crimes, hate speech and discrimination; however ECRI has received no indication that these have as yet been enacted, nor as to the additional elements that they may include.<sup>9</sup> No other relevant changes to criminal legislation at the level of the State or of the Entities have been reported.

16. ECRI reiterates its recommendation that the law should explicitly provide that racist motivations constitute an aggravating circumstance in respect of all offences. It furthermore encourages the authorities at the relevant levels to complete as soon as possible the process of enacting a law banning fascist and neo-fascist organisations and their symbols and to bring to fruition the work under way to strengthen criminal law provisions against hate crimes, hate speech, discrimination, cybercrime and Holocaust denial.
17. ECRI strongly recommends that the authorities monitor the effectiveness of the criminal law provisions against racism and racial discrimination and that they complement these provisions as necessary to provide effective protection against racism and racial discrimination, taking into account the elements set out in ECRI's General Policy Recommendation No. 7.

- *Application*

18. In its first report, ECRI urged the authorities to improve the application of the existing criminal law provisions against racism and racial discrimination. It stressed that all those working in the criminal justice system should be thoroughly trained on the provisions' contents and made aware of the need to take acts of racism and racial discrimination seriously and bring their perpetrators to justice.
19. The authorities have indicated that no cases have been brought before the Court of Bosnia and Herzegovina regarding criminal offences of racial discrimination under Articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina, respectively prohibiting discrimination by public officials and the prevention of returns of refugees or displaced persons.<sup>10</sup> Between 2005 and 2007, 34 cases were brought under the relevant provisions of the Criminal Code of the Federation of Bosnia and Herzegovina, mostly under Article 163, prohibiting incitement to racial or religious hatred, discord or hostility (for example, through graffiti on religious buildings).<sup>11</sup> Between 2005 and 2008 there was only one case

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<sup>9</sup> In this respect ECRI draws attention to paragraph 18 of its General Policy Recommendation No. 7, according to which, in addition to criminalising public incitement to violence, hatred or discrimination, the law should penalise, inter alia, public insults and defamation or threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin; the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin; the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or crimes; and a number of additional relevant offences.

<sup>10</sup> CERD/C/BIH/7-8, dated 25 August 2008, § 98.

<sup>11</sup> CERD/C/BIH/7-8, dated 25 August 2008, § 132 and § 136.

recorded in which there was a violation of the relevant provisions of the Criminal Code of the Republika Srpska.<sup>12</sup>

20. ECRI notes these figures and welcomes the efforts made by the authorities to collect them. It is concerned, however, at reports that many racist or racially discriminatory incidents reported to the police do not progress beyond the initial investigation stage, due notably to a lack of understanding of hate elements and indicators. It is also concerned at reports that decisions to close investigations in such cases may at times be politically motivated. It stresses again the need to ensure that all those working in the criminal justice system are fully conversant with the criminal law provisions against racism and racial discrimination, in order to ensure that they are properly applied in practice. It also underlines that the enactment and application of provisions defining racist motivations as an aggravating circumstance for ordinary offences would allow heavier sentences to be imposed in such cases, even if they did not fit the definitions of the specific racist offences laid down in the various Criminal Codes.
21. ECRI again urges the authorities of Bosnia and Herzegovina to take all necessary measures to ensure the full and proper application of the criminal law provisions relating to racism and racial discrimination. It again underlines that all persons working within the criminal justice system – members of the police force, the prosecution service and the judiciary – should be thoroughly trained on the contents of the relevant provisions, and notes that such training should also be available for lawyers. It also reiterates the importance of alerting public officials to the need to take acts of racism and racial discrimination seriously and to bring their perpetrators to justice.
22. ECRI encourages the authorities to continue and strengthen their efforts to collect data concerning the application of criminal law provisions in this area so that their effectiveness can be assessed; these data should cover all the stages of criminal proceedings, from the filing of a complaint to the final outcome.

### **War crimes**

23. Persons may be tried on war crimes charges at a variety of levels in Bosnia and Herzegovina, from the Court of Bosnia and Herzegovina to the cantonal and district courts. In its first report, ECRI urged the authorities to deploy all efforts to bring to justice all persons responsible for war crimes, crimes against humanity and genocide committed during the war, in the interests of the victims, their families and of reconciliation and integration of a still divided society. At the same time, ECRI urged the authorities of Bosnia and Herzegovina to provide the necessary political and material support to the initiative to establish a Truth and Reconciliation Commission.
24. ECRI notes with regret that reflexions on the establishment of a truth and reconciliation commission appear to have come to a halt. While ECRI recognises that it might be unusual for such a body to co-exist alongside concerted efforts to prosecute all war criminals, it stresses the need for Bosnia and Herzegovina to come fully to terms with its recent past and considers that such a body could have contributed to this process by providing a forum in which painful issues could have been confronted frankly, from a variety of perspectives, and with a view to finding common ground from which to move forward together. As noted elsewhere in this report, such an approach appears at present to be the exception rather than the rule in Bosnia and Herzegovina. This makes it all the

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<sup>12</sup> CERD/C/BIH/7-8, dated 25 August 2008, § 175.



harder to build a society in which all members are recognised as able to make a positive contribution, no matter what their origin or where they live.<sup>13</sup>

25. Since ECRI's report, the War Crimes Chamber of the Court of Bosnia and Herzegovina has been established. The Chamber and the Special Department for War Crimes of the Prosecutor's Office of Bosnia and Herzegovina are reported to function efficiently and in accordance with relevant international standards; the authorities have indicated that as of August 2008, the Chamber had issued 89 orders to conduct investigations, 27 indictments, 8 first-instance judgments (6 guilty verdicts and 2 acquittals) and 6 judgments on appeal (5 guilty verdicts and one acquittal).<sup>14</sup> In December 2008, the Council of Ministers adopted a National War Crimes Strategy, intended to provide a systematic approach for dealing with the large volume of war crimes cases. ECRI welcomes the adoption of this strategy, although it notes that so far, little progress appears to have been made towards its implementation in practice; ECRI understands that budgetary difficulties may be contributing to this situation. Problems in war crimes prosecutions also continue to be reported due to obstacles such as the application of different Criminal Codes at State and Entity levels, a need for improved co-operation between prosecutors and police and between police in different Entities, as well as insufficient, and insufficiently specialised, prosecutors at cantonal and district levels. A failure to provide adequate witness protection also seriously hampers efforts to secure convictions against war criminals, as witnesses remain exposed to harassment, intimidation and threats, and victims acting as witnesses rarely have access to adequate support.<sup>15</sup> ECRI stresses the need to provide adequate human and financial resources to ensure that endeavours to prosecute all war criminals are able to bear fruit. It notes that war crimes trials also continue to generate considerable, often polarised media coverage, and emphasises the particular importance of securing effective prosecutions for war crimes in a context where this path has been chosen not only as the means of ensuring that justice is done but also as the chief means of bringing to light the truth about the past and allowing reconciliation to occur.
26. ECRI again urges the authorities to deploy all necessary efforts to bring to justice all persons responsible for war crimes, crimes against humanity and genocide committed during the war, in the interests of the victims, their families and of reconciliation and integration of a still divided society. It strongly encourages the authorities to give full effect to the measures already taken towards securing effective prosecutions, in particular by ensuring that adequate human and financial resources are available for the task at hand.
27. In parallel, ECRI urges the authorities to renew public debate on the means to achieve genuine reconciliation, whether through a formalised commission or other appropriate means.

#### **Law on the Prevention of All Forms of Discrimination<sup>16</sup>**

28. In its first report, ECRI strongly recommended that the authorities of Bosnia and Herzegovina consider the adoption of comprehensive civil and administrative legislation against racial discrimination.

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<sup>13</sup> See further below, The Need to Acknowledge Full Bosnian Democratic Citizenship.

<sup>14</sup> CERD/C/BIH/7-8, dated 25 August 2008, § 105.

<sup>15</sup> OSCE, Witness Protection and Support in BiH Domestic War Crimes Trials: Obstacles and recommendations a year after adoption of the National Strategy for War Crimes Processing, January 2010

<sup>16</sup> Other, more specific civil law provisions dealing with discrimination in the field of employment are dealt with below; see Discrimination – Employment.

29. On 23 July 2009, the Parliamentary Assembly enacted the Law on the Prevention of All Forms of Discrimination, which came into force on 6 August 2009. It sets out an extensive, non-exhaustive list of protected grounds, including race, skin colour, language, religion, ethnic affiliation, national or social origin, connection to a national minority, political or any other persuasion, property, membership in a trade union or any other association, education, social status and sex, sexual expression or sexual orientation, and every other circumstance. It also covers a broad range of sectors (employment, membership in professional organisations, education, training, housing, health, social protection, goods and services). It includes definitions of direct and indirect discrimination as well as other forms of discrimination such as harassment, mobbing, segregation, instructing others to discriminate and incitement to discriminate. The Law applies to the actions of all public bodies at the level of the state, Entity, canton and Brčko District, municipal institutions and bodies, and legal persons exercising public powers, as well as to the actions of all individuals and legal entities.
30. The Law does not prevent the maintenance or adoption of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons on grounds covered by the Law. However, it also includes a long list of express exceptions to the principle of equal treatment, in addition to the general exception based on an objective and reasonable justification for different treatment. Religious groups in particular are granted broad exemptions from the obligation of equal treatment, notably in the field of employment.
31. The Law regulates in detail the various forms of legal proceedings that may be brought by victims of discrimination, provides for courts to order temporary protection measures, sets out a shifting burden of proof, provides for third-party interventions and collective suits and protects persons who bring proceedings, or who act as witnesses, against reprisals. It defines breaches of the Law as minor offences, subject exclusively to fines. The fines that may be imposed on persons or bodies who cause discrimination by failing to co-operate with a request or recommendation of the Ombudsmen or with a court order are higher than those that may be imposed for other discrimination offences.<sup>17</sup> Fines are also set out for cases where a person suffers discrimination because of their participation in discrimination proceedings.
32. ECRI welcomes the enactment of the Law on the Prevention of All Forms of Discrimination and notes that according to information provided by the authorities, this Law has also formed the basis for the subsequent adoption of a Law Against Violence During Sports Events as well as amendments to the Law on the Civil Service, providing greater protection against discrimination and mobbing. ECRI notes with particular interest the broad range of grounds, sectors of activity and actors that it expressly covers. It is however concerned at the wide-ranging list of exceptions to the principle of equal treatment laid out in the Law. ECRI stresses that persons should not be prevented from holding employment on religious grounds unless there is a direct and necessary link between an individual's faith and the functions to be exercised; ECRI is concerned that given its current rather broad wording, the law may be open to abuse on this point – a matter that is all the more of concern in a country where ethnic origins and religious beliefs are often perceived as coinciding. ECRI notes in addition that the law could be strengthened through the inclusion of some further elements set forth in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, such as laying out more clearly the elements of the duty placed on public authorities to promote equality, and placing them under a duty to ensure respect of the prohibition on

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<sup>17</sup> See further below, Anti-discrimination bodies and other institutions, regarding the role of the Human Rights Ombudsman of Bosnia and Herzegovina with respect to the application of the Law.

discrimination in public procurement. Finally, ECRI notes that although it is too soon to draw far-reaching conclusions as to the impact of the new Law in practice, the Ombudsmen have reported an increase in discrimination-related cases since the Law's entry into force, particularly as regards discrimination on grounds of national origin and of gender. At the same time, ECRI has received reports that neither judges and prosecutors nor lawyers are yet sufficiently familiar with the Law to be able to apply it confidently in practice.

33. ECRI strongly recommends that the authorities of Bosnia and Herzegovina provide judges and prosecutors with initial and on-going training, as a matter of priority, on the Law on the Prevention of All Forms of Discrimination in particular and on issues pertaining to racial discrimination in general. It also recommends that training be offered to lawyers on the Law and on issues pertaining to racial discrimination more generally. It underlines that in line with the definitions of direct and indirect discrimination set out by ECRI in its General Policy Recommendation No. 7, this training should cover grounds such as "race", colour, language, religion, nationality or national or ethnic origin.
34. ECRI recommends that the authorities monitor the impact in practice of the Law on the Prevention of All Forms of Discrimination, especially as regards its effectiveness in providing remedies against discrimination on ethnic and religious grounds, and amend the Law as necessary to ensure that it provides real and effective protection against all forms of racial discrimination. ECRI further invites the authorities to consider revising the law to include further elements set forth in ECRI's General Policy Recommendation No. 7, such as laying out more clearly the elements of the duty placed on public authorities to promote equality, and placing them under a duty to ensure respect of the prohibition on discrimination in public procurement
35. ECRI recommends that the authorities take steps to raise public awareness of the Law on the Prevention of All Forms of Discrimination.

### **Administration of justice**

36. In its first report, ECRI noted that recruitment of judges from under-represented constituent peoples had been difficult notably in areas where minority returns were not yet sustainable. It noted reports of lack of independence and impartiality of judges, including favouritism based on ethnic origin or on affiliation with ethnically based political parties. The mono-ethnic composition of the courts in many municipalities was also reported to undermine the confidence in the judicial system of persons not identifying with that ethnic group. The authorities have indicated that efforts since then to increase the diversity of the judiciary, notably by employing members of under-represented constituent peoples, have been hampered, at least in some cases, by a lack of applicants.
37. ECRI recommends that the authorities strengthen their efforts to ensure diversity in the criminal justice system throughout Bosnia and Herzegovina and to increase public confidence in the capacity of the judicial system to provide independent and impartial proceedings, regardless of the ethnic composition of the court.

### **Anti-discrimination bodies and other institutions**

- *Human Rights Ombudsman*

38. In its first report, ECRI strongly encouraged the authorities to consider establishing a specialised body to combat racism and racial (including ethnic and religious) discrimination, noting that this institution could be entrusted with monitoring anti-discrimination legislation if such legislation were enacted. In 2006, amendments to the Law on the Human Rights Ombudsman in Bosnia and

Herzegovina were enacted, allowing for the single Human Rights Ombudsman institution at state level to replace the two Entity-level institutions. Its members were elected in 2008. Following considerable delays, all the legislation necessary at Entity level to provide for the phasing out of the two Entity Ombudsman institutions and full transfer of the relevant competences to the state level has now been enacted. The authorities have moreover indicated that the Entity institutions have now indeed been dissolved and their responsibilities transferred to the institution at State level.

39. Under the new Law on the Prevention of All Forms of Discrimination described above, the State Ombudsman institution is designated as the central institution competent for protection from all forms of discrimination. It is granted the power, within its competences, to receive individual and group complaints related to discrimination, provide information to victims, refuse to accept a complaint or initiate an investigation, propose mediation, collect and analyse statistical data on discrimination cases, report on discrimination to the various parliaments of Bosnia and Herzegovina, inform the public about manifestations of discrimination, conduct surveys, provide opinions and recommendations with the aim of preventing discrimination, initiate and participate in discrimination proceedings, monitor and advise on legislation, raise awareness on discrimination-related issues, and improve policy and practices aimed at ensuring equal treatment. It is required to set up a department exclusively dealing with issues related to discrimination, and its budget must include a specific line devoted to this department. At the same time, the Law introduces a central database of discrimination-related data, to be kept by the Ministry of Human Rights and Refugees. Competent public institutions must keep records of all reported cases of discrimination and deliver the collected data to the Ministry for Human Rights and Refugees. The Ministry reports to the Council of Ministers on the collected data, and, through the latter, to the Parliament.
40. ECRI notes that crucial responsibilities in the field of combating racial and other forms of discrimination have been attributed to the Human Rights Ombudsman. It stresses that the attribution of these responsibilities must be accompanied by the allocation of sufficient resources to this institution to allow it to carry out its functions effectively. It further notes that in order for this body to play an effective role in combating discrimination, it is vital that its decisions be fully and promptly implemented by all parties concerned.
41. ECRI strongly recommends that the authorities make sufficient financial and human resources available to the Human Rights Ombudsman to enable this institution to carry out effectively all the tasks that have been assigned to it in the field of combating racial discrimination.
42. It further recommends that the authorities of Bosnia and Herzegovina take all necessary steps to ensure that all decisions of the Human Rights Ombudsman are complied with.

## **II. Racism in Public Discourse**

### **Exploitation of nationalism in politics**

43. In its first report, ECRI stressed that political parties should resist the temptation to resort to discourse that fosters ethnic division and animosity and urged the authorities to take ad hoc measures specifically targeting the political use of ethnically inflammatory discourse.
44. ECRI remains deeply concerned that political parties continue to exploit nationalist arguments in their discourse, fostering divisions between the various constituent peoples and ethnic groups living in Bosnia and Herzegovina. Since

ECRI's previous report, the tendency of political leaders to portray their platforms in ethnic terms – each arguing that they are the only genuine champions of the rights and ethnic interests of the constituent people to which they belong, while simultaneously stigmatising other constituent peoples and blaming the latter for any problems experienced in realising these rights and interests – appears to have grown. In recent years, high-ranking political leaders have, for example, publicly denied crimes against humanity that have been recognised by the International Criminal Tribunal for the former Yugoslavia, planned to visit convicted war criminals in neighbouring states, erected prominent symbols of one constituent people in places where they are bound to offend persons belonging to other groups, and declared that they would not accept being tried by a judge belonging to a different constituent people from their own. Representatives of civil society point out that such discourse hurts citizens doubly: concrete problems affecting society as a whole, such as unemployment and poverty, are ignored during election campaigns, in favour of us-against-them arguments, and remain unsolved; at the same time, the spiral of scapegoating creates a climate in which virulent nationalistic rhetoric is increasingly seen as the norm.

45. ECRI is deeply concerned that the use of this type of discourse – adopted not only by marginal but also, and with increasing frequency over recent years, by mainstream parties, including those holding positions of power – obstructs the integration of the various ethnic and religious groups of which the society of Bosnia and Herzegovina is composed. It finds particularly worrying the fact that high-level political leaders not only do not condemn such discourse, but engage in it themselves. It notes that at the same time, local politicians appear to have been able to engage in ethnically biased acts – such as providing electricity only to parts of villages or towns in which the ethnic group to which they belong is in the majority – with impunity. ECRI stresses that discourse in which others (distinguished, for example, by their ethnic origins or religious beliefs) are portrayed as solely to blame for problems experienced by all of society, and in which the fundamental, shared human condition is systematically brushed aside, is deeply harmful not only to the individuals targeted but to society as whole. It stresses the urgent need for change, in order to rebuild trust and move forward towards an integrated society in which all citizens can participate on an equal footing, whether or not they identify themselves with any given constituent people and irrespective of where in the territory of Bosnia and Herzegovina they live.
46. ECRI strongly urges political leaders at all levels to break out of the spiral of intolerant, nationalist discourse that seeks primarily to attribute blame and that serves above all to inflame tensions rather than build trust between groups. It urges them to focus instead on common, forward-looking solutions for an integrated society based on the equality of all its citizens. It emphasises that political leaders on all sides should take a public stance against the expression of racist and xenophobic attitudes, including when these expressions come from within their own ranks.
47. ECRI strongly recommends that the authorities of Bosnia and Herzegovina ensure that the legislation prohibiting incitement to hatred is applied to all politicians who make racist or xenophobic statements or remarks.
48. ECRI again strongly urges the authorities of Bosnia and Herzegovina to take ad hoc measures targeting specifically the use of ethnically inflammatory discourse by political leaders, including, for instance, legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts. ECRI again draws the attention of the authorities of Bosnia and Herzegovina to the recommendations in this respect contained in its General Policy Recommendation No. 7.

## Media

49. As noted in ECRI's first report, Articles 3 and 4 of the self-regulatory Press Code contain provisions against incitement to racial, ethnic or religious hatred and against making prejudicial, insulting or irrelevant references to a person's racial, ethnic or religious background. The independent, self-regulatory Press Council monitors the implementation of these provisions. As regards electronic media, the Communications Regulatory Agency, an independent public authority, has sole jurisdiction over telecommunications and broadcasting throughout the territory of Bosnia and Herzegovina and deals with individual complaints regarding breaches of the Broadcasting Code of Practice. In its first report, ECRI encouraged the authorities of Bosnia and Herzegovina to support initiatives aimed at reaching all communities simultaneously and to impress on the media the need to ensure that reporting does not contribute to creating an atmosphere of hostility or rejection towards members of any ethnic or religious group.
50. The authorities have indicated that, acting in accordance with international standards, Bosnia and Herzegovina continuously makes efforts, together with the Communications Regulatory Agency, to take the necessary measures against the dissemination through the press, audiovisual and electronic media and new communication technologies of messages of incitement to violence motivated by hatred. ECRI is however deeply concerned at reports from a number of sources indicating that hate speech in the media is on the rise and that nationalistic and inflammatory language is increasingly used in the media. The latter are reported frequently to relay without criticism or to amplify intolerant discourse employed by politicians, to present news in an ethnically biased manner, or to disclose the ethnic origins of suspects regardless of whether these are relevant to a story. ECRI is concerned that the media are increasingly seen as being instrumentalised, inter alia by politicians who use messages of national, ethnic or religious intolerance as a means to gain influence. In this regard, the electronic media reportedly have a particularly strong impact as economic conditions are such that it is beyond the means of many to buy print media publications regularly.
51. ECRI again strongly encourages the authorities of Bosnia and Herzegovina to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any ethnic and religious group and to the need to play a proactive role in countering such an atmosphere.
52. ECRI recommends that the authorities ensure that media that infringe the prohibition on incitement to hatred are duly prosecuted and punished.
53. ECRI again encourages the authorities to support initiatives aimed at reaching all communities simultaneously, such as newspapers presenting the same articles in different languages or a variety of viewpoints on topical issues, and radio and television broadcasts of interest to all communities and made accessible to all residents of the country.

## III. Racist Violence

54. In its first report, ECRI expressed deep concern at the continuing occurrence of return-related incidents – some of which involved physical attacks against persons, resulting occasionally in the death of the victims – and strongly urged the authorities of Bosnia and Herzegovina to investigate these incidents thoroughly and swiftly and to bring the perpetrators to justice.
55. ECRI notes that in the Federation of Bosnia and Herzegovina, statistics appear to have been collected on the number of prosecutions brought under the relevant

criminal law provisions but not on the identity of victims of crimes; in the Republika Srpska, it appears that information on the victims of crimes is available, but that there is little indication as to the number of crimes committed with a racist motivation.<sup>18</sup> ECRI is deeply concerned that serious crimes have been committed against minority returnees, including murders, for which the motivations remain unelucidated. From the information available to ECRI, it does not seem that data is systematically collected in Bosnia and Herzegovina on the number of complaints made to the police under the relevant criminal legislation, the number of prosecutions subsequently brought or the number of convictions recorded. Nor does it appear that systematic records are made of the number of cases in which victims consider that an ordinary criminal offence has been committed on racist grounds. ECRI is concerned that in the absence of systematic efforts to collect information on racist violence in Bosnia and Herzegovina, it is impossible adequately to address problems that may arise in this field.

56. Religious sites and property of all three official faiths have been the subjects of violent attacks each year. Mosques, Orthodox and Catholic churches, as well as Jewish sites, have been vandalised and cemeteries and tombstones desecrated. ECRI welcomes the fact that in some cases the perpetrators have been identified and punished, but is concerned at reports that in other cases, police officers and local politicians have tended to minimise the importance of such incidents. While interethnic and interreligious tensions are evidently politically sensitive issues, ECRI stresses the need to address such issues squarely, both through condemning racist attacks whenever they occur and carrying out adequate investigations into every such case.
57. Violence has occurred between supporters of football teams of different ethnic origins. In October 2009, a Bosniac man was killed by shots fired from a police officer's gun during riots between Bosniac and Croat supporters prior to a football match in Široki Brijeg; the principal suspect escaped from police custody and at the time of writing it remained unclear whether the gun was fired by a spectator or by a law enforcement officer. In 2007, UEFA fined and disqualified the Partizan team (Serbia) after violence broke out between supporters of this team and of Zrinjski (Bosnia and Herzegovina), at a match held in Mostar at which some Partizan fans attacked police officers and chanted slogans glorifying two persons indicted for war crimes. There were also violent clashes between supporters at an international friendly game in 2007 between the teams of Croatia and Bosnia and Herzegovina. ECRI regrets that sporting events have been used by some as vehicles for manifesting or spreading hate and strongly hopes that the perpetrators will in all cases be rapidly brought to account.
58. ECRI recommends that the authorities of Bosnia and Herzegovina take steps to introduce systematic and comprehensive monitoring of all incidents that may constitute racist violence, and draws the authorities' attention in this respect to ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.
59. ECRI strongly recommends that all incidents of alleged racist violence, whether against people or property, be thoroughly and promptly investigated so as to ensure that the perpetrators of criminal acts are brought to justice. It calls on political leaders to take the lead in denouncing racist violence wherever it occurs.
60. ECRI recommends that the authorities combat racist violence in sport. It draws their attention to its General Policy Recommendation No. 12 on combating racism

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<sup>18</sup> CERD/C/BIH/7-8 Eighth periodic Report due in 2008: Bosnia and Herzegovina, 25 August 2008, at 177 and 179; see also above, Criminal law provisions against racism and racial discrimination – Application.

and racial discrimination in the field of sport, which proposes a range of measures that can be taken to this end.

#### **IV. Discrimination in Various Fields**

##### **Education**

61. In its first report, ECRI strongly urged the authorities of Bosnia and Herzegovina to ensure a thorough implementation of the laws and agreements on education then in place, stressing that all public schools in Bosnia and Herzegovina should be organised as multicultural, multilingual, multireligious, open and inclusive schools for all children. ECRI underlined in particular the need for the common core curriculum to be applied in all schools in the country.
62. In its first report, adopted in 2004, ECRI noted the existence of framework legislation on primary and secondary education, enacted in 2003, and implementing legislation enacted in the Republika Srpska and most cantons of the Federation of Bosnia and Herzegovina. ECRI notes that since then four further Framework Laws have been enacted at State level, concerning Preschool Upbringing and Education, Secondary Vocational Education and Training, and Higher Education (all enacted in 2007), and the Agency for Preschool, Primary and Secondary Education (enacted in 2008). A number of implementing laws have also been enacted at Entity level and in the Brčko District. The Standing Conference of Ministers of Education, established in 2008 as the senior advisory body in the field of education, has also met regularly. ECRI welcomes these developments and hopes that they will strengthen the process of harmonising education in Bosnia and Herzegovina.
63. ECRI is concerned that children of different ethnic backgrounds continue to attend different schools in Bosnia and Herzegovina. It notes with concern reports that in Sarajevo and Banja Luka, for example, Bosniac and Serb children attend different, monoethnic schools. It is also concerned at the persistence of many cases of “two schools under one roof”, in which a single set of school facilities hosts two schools and often two school administrations. Although initially designed as a positive measure to allow minority returnee children to attend school, to which they otherwise had no access, this system rapidly showed its limits, as children attending the schools are segregated along ethnic lines. ECRI welcomes efforts that have been made in recent years to address the outstanding issues in this field. It notes that the Standing Conference of Ministers of Education decided in 2008 to set up a Working Group on this issue, which met several times and was due to report on its conclusions in March 2010. According to information provided by the authorities, at that date 34 of the 54 schools that initially applied this practice were still applying it. ECRI welcomes the indication from the authorities that the Ministry for Civil Affairs of Bosnia and Herzegovina, the Parliament and the Government of the Federation of Bosnia and Herzegovina – within whose jurisdiction this matter falls – are determined to eliminate this phenomenon in all three Cantons where such schools are located within the next school year. ECRI underlines that progress is urgently needed to resolve this situation; it notes that in the meantime, children attending these schools experience ethnic segregation every day of their school lives, using separate school entrances, different timetables and different curricula, and learning with different teachers. ECRI notes that whereas some of these schools have now been reunited, as a first step, at the administrative level, even this is not yet the case for all.
64. As regards the use of the common core curriculum, designed to allow children to attend classes together regardless of their ethnic background while at the same time preserving their cultural identity, ECRI notes that the translation into practice



of the agreement signed by the Ministries of Education of the Entities and the Cantons has been uneven. Some cantons in the Federation did not begin implementing the curriculum until the 2009-2010 school year. Moreover, in accordance with the agreement, the proportion of the curriculum that is common varies according to the subject: thus, for mathematics and science, large parts of the curriculum are shared, whereas for subjects such as history, geography or language and literature, the shared part is considerably smaller. ECRI has received numerous reports that the non-shared curricula for culturally sensitive subjects such as history, and the manner in which other groups are portrayed in or excluded from the teaching of these subjects, may tend to leave children either ignorant about or with a sense of superiority over other groups, or even with feelings of hostility towards other groups.

65. ECRI regrets that even for the common parts of school curricula, children do not necessarily attend mixed classes, but may be taught separately, in different mother-tongue classes, and using different textbooks. It is concerned at reports that textbooks continue to display ethnic bias and welcomes the development of guidelines for the production of geography and history textbooks, intended to ensure that future textbooks contain balanced, unbiased information. ECRI notes with interest steps taken in the Brčko District towards teaching children parts of the common core curriculum together, with the teacher delivering classes in his or her own language but being trained, and obliged, to support children using all three official languages of Bosnia and Herzegovina.
66. ECRI is concerned at reports that in a number of cases, schools do not provide a neutral learning environment. Several hundred schools are reported to have names that are incompatible with the criteria agreed upon by all ministers of education in 2002; others display divisive symbols and insignia. These include representations of historical figures and religious insignia closely associated with specific ethnic groups. ECRI notes in this context that there appears to be an increasing demand, including from pupils, for religious education to be provided about the history and culture of a variety of religions, rather than focusing on a single religion; it hopes that this will be followed up.
67. ECRI stresses again that all public schools in Bosnia and Herzegovina should be organised as multicultural, multilingual, multireligious, open and inclusive schools for all children. It emphasises that the right of pupils and teachers to use their own language should be respected and that, as practice in Brčko has shown, coupled with the necessary training for teachers, this is compatible with children of the three constituent peoples being taught in the same classes. ECRI also emphasises the importance of a common curriculum in helping to build bridges and foster a sense of common citizenship. It stresses that the existing common core curriculum should be fully applied in all schools in the country, and strongly hopes that this will be developed further, in co-operation with all constituent peoples, national minorities and persons who do not identify with any single ethnic group.
68. ECRI urges the authorities of Bosnia and Herzegovina to put an end to all forms of segregation in public schools, including all forms of monoethnic schools.
69. ECRI urges the authorities to bring to completion as a matter of priority their work to resolve all remaining cases of “two schools under one roof”. It emphasises that in so doing, the authorities should ensure not only that these schools are unified administratively but also that pupils are taught together wherever possible.
70. ECRI urges the authorities to strengthen their efforts to remove all other divisive elements from the school system. It refers in particular in this context to the need to provide a neutral learning environment which ensures that all textbooks are

free of ethnic bias and that all school premises, names and insignia are also free of ethnically divisive elements.

71. ECRI strongly recommends that the authorities pursue and strengthen their efforts to implement the common core curriculum. It encourages them to continue developing the contents of this curriculum so that it covers an increasing proportion of all subjects taught in schools – including subjects such as history, literature and geography – and serves to foster mutual understanding of and openness to cultural and ethnic differences.
72. ECRI recommends that, as part of their efforts in this field, the authorities ensure that all teachers are trained to work in ethnically diverse classrooms including children belonging to all the different ethnic groups living in Bosnia and Herzegovina.

## Employment

73. In its first report, ECRI urged the authorities of Bosnia and Herzegovina to ensure the thorough implementation of Article 143 of the Labour Code of the Federation and of Article 152 of the Labour Code of the Republika Srpska, enabling persons who were unlawfully dismissed during the war to file a claim before ad hoc commissions at Entity or, for the Federation, at the level of the cantons, for re-integration or compensation.
74. According to information provided by the authorities, as of December 2007, 59 603 claims under Article 143 of the Labour Code of the Federation of Bosnia and Herzegovina had been filed with nine of the ten cantonal commissions. Of these, 41 257 claims had been decided and 18 346 were still pending.<sup>19</sup> At the same time, at the level of the Entity commission, 5 760 claims had been filed and 5 700 of these had been decided.
75. ECRI notes that since its first report, the Labour Code of the Republika Srpska has been amended; questions related to unlawful dismissals during the war are now governed by Articles 182 to 189 of the Labour Code. According to information provided by the authorities in March 2010, 58 629 complaints have been received under the relevant provisions. From 2007 to 2009, 13 085 decisions were delivered, just under half of which were in favour of the complainant.
76. ECRI welcomes the progress made since its first report in processing claims for unfair dismissals during the war. At the same time, it regrets that in many cases wrongfully dismissed complainants cannot be re-integrated in their former workplaces, and notes with concern reports that compensation awarded is not always paid promptly, or is not paid at all. In these cases complainants are forced to seek redress through the courts, compounding the discrimination already suffered due to their war-time dismissal.
77. ECRI recommends that all outstanding claims under the unfair dismissals provisions of the Entity Labour Codes be dealt with rapidly and thoroughly. It recommends that the authorities take all necessary measures to ensure that decisions of the Entity and cantonal commissions are executed in full and with due speed.
78. In its first report, examining questions related to racial discrimination in the fields of employment and social security, ECRI urged the authorities of Bosnia and Herzegovina to ensure that all decisions of the Constitutional Court and human rights institutions such as the Ombudsman were complied with. It also

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<sup>19</sup> Figures were not available for the canton of West Herzegovina.

recommended that the authorities ensure that national minorities were covered by efforts aimed at increasing the number of persons from under-represented groups in the civil service and in public enterprises.

79. ECRI notes with regret that public sector employment remains far from respecting the ethnic breakdown of Bosnian society as registered in the last (1991) census. Where available, figures show that the composition of local administrations is often heavily weighted in favour of whichever constituent people is in the majority in that area, at the expense of all other groups. Minority returnees experience difficulty in accessing both public and private sector employment. As discussed further below, the situation of the Roma is especially dire.<sup>20</sup>
80. ECRI notes that lack of access to employment is one of the factors that seriously hamper minority returns. It stresses the importance and urgency of overcoming barriers to employment due to discrimination on ethnic grounds. ECRI emphasises in this context the need to implement fully the Constitutional Court's decision of 30 June and 1 July 2000, which established that all constituent peoples enjoy this status throughout the territory of Bosnia and Herzegovina. It regrets that little progress in implementing this judgment appears to have been achieved in the intervening years. It stresses both the need to give full effect to this judgment of the Constitutional Court, as to all of its judgments, and the positive impact towards building an integrated society that may be felt when the diversity of that society is better reflected through the staff employed in its public institutions. ECRI furthermore stresses the need to ensure that all persons enjoy in practice the right of access to employment without discrimination, and the right to be free of discrimination in the workplace, irrespective of their ethnic affiliation.
81. ECRI recommends that the authorities strengthen their efforts to ensure that public sector employment adequately reflects the diversity of Bosnian society. It urges the authorities to step up their efforts to implement the Constituent Peoples judgment of the Constitutional Court of 30 June and 1 July 2000. It strongly recommends that the authorities ensure that national minorities, as well as persons who do not identify with any constituent people or national minority, are also covered by efforts aimed at increasing the number of persons from under-represented groups in the civil service and in public enterprises.

## Housing

82. There have been allegations of discrimination in relation to restitution of property and allocation of reconstruction assistance affecting, in particular, minority returnees, displaced persons and Roma. These questions are addressed in the relevant sections below.<sup>21</sup>

## Access to health care

83. In its first report, ECRI urged the authorities of Bosnia and Herzegovina to implement thoroughly the Inter-Entity Agreement on Health Insurance, which aims to overcome difficulties in accessing healthcare faced by insured people, mostly returnees, who have had to move from one Entity to the other. ECRI also urged the authorities of Bosnia and Herzegovina to ensure that all persons living in Bosnia and Herzegovina enjoy adequate access to healthcare in a manner that is not directly or indirectly discriminatory vis-à-vis particular ethnic groups.
84. ECRI notes that health insurance is dealt with by a number of separate funds in Bosnia and Herzegovina: one in each of the cantons of the Federation, one in the Republika Srpska and one in the Brčko District. The aim of the agreement is to

<sup>20</sup> See below, Vulnerable Groups – Roma.

<sup>21</sup> See below, Vulnerable Groups – Roma and Vulnerable Groups – Minority returnees.

avoid delays in providing necessary health care by ensuring that, for persons requiring health care outside the area covered by their fund, health care can be provided first, and payment collected subsequently by the fund that has provided care from the fund by which the patient is insured. The latter is determined by the person's last registered residence and there is no automatic transfer of rights when a person changes his or her residence. The agreement is of particular relevance to people who are registered as residing in one Entity but who work in the other, as well as to returnee pensioners, who may be paid their pension from one Entity but reside in the other. ECRI is concerned at reports that discrimination continues to occur in practice, in part because the agreement is not implemented throughout the territory of Bosnia and Herzegovina. As a result, patients seeking treatment in a different canton from that in which they are insured, for instance because the relevant medical facility is closer to their place of residence, have had to cover all expenses for treatment themselves, or have had to cover the additional costs of transport to an institution that accepted their insurance.

85. As regards the provision of health care more generally, the authorities have emphasised that the law makes no distinction regarding the health care to be provided to citizens of different ethnic backgrounds. Civil society actors stress, however, that there are health care centres that do not employ any staff having an ethnic background different from that of the majority of persons living in the area, and which in some cases display symbols strongly associated with specific ethnic groups and that have the effect of dissuading persons not belonging to the majority group in the area from seeking necessary treatment there. ECRI is furthermore deeply concerned that some persons in Bosnia and Herzegovina have no health insurance at all. This particularly concerns Roma and minority returnees: the lack of identity documents of many Roma constitutes a serious obstacle to registration with health insurance providers, and for Roma and other vulnerable groups, low rates of employment and/or of enrolment in schools mean they are also less likely to enjoy automatic health insurance cover.
86. ECRI notes with interest the amendment in December 2008 of the Law on Health Insurance in the Federation of Bosnia and Herzegovina, which abolished, with respect to refugees, returnees and displaced persons, the 30-day time-limit for registration with a health insurer, and introduced the notion of original insurance holders, to insure children up to 26 who are not covered by the health insurance of other family members as well as persons over 65 who are not otherwise covered. It also notes with interest the creation of a Standing Conference of the (State) Ministry of Civil Affairs, the Ministers of Health of the Entities and the head of the health department of Brčko. It hopes that this body will strengthen co-operation and co-ordination in the field of health and enable outstanding issues to be rapidly resolved.
87. ECRI again urges the authorities of Bosnia and Herzegovina to implement fully the Inter-Entity Agreement on Health Insurance.
88. ECRI strongly encourages the authorities to pursue and wherever necessary to strengthen their efforts to ensure that no person in Bosnia and Herzegovina suffers discrimination in access to health insurance, bearing in mind inter alia that this problem particularly affects vulnerable groups such as minority returnees and Roma.
89. ECRI again urges the authorities of Bosnia and Herzegovina to ensure that all persons living in Bosnia and Herzegovina enjoy adequate access to healthcare in a manner that is not directly or indirectly discriminatory vis-à-vis particular ethnic groups. It recommends that the authorities examine seriously all allegations concerning the display of ethnically divisive symbols in health care centres and

take all necessary steps to ensure that such symbols are removed and that every health care centre provides an environment that is open and accessible to all. It further refers in this context to its recommendations made elsewhere in this report regarding the need to ensure that public sector employment adequately reflects the diversity of Bosnian society.

### **Access to public services**

90. In its first report, ECRI urged the authorities of Bosnia and Herzegovina to address the situation of pension amounts differing by district, and to ensure that provision of social security takes place in a manner that is not directly or indirectly discriminatory vis-à-vis particular ethnic groups. ECRI notes that separate pension funds continue to exist for the Federation and the Republika Srpska. In March 2000, the different pension funds entered into an agreement to the effect that whichever fund had made payments to a given pensioner before the agreement came into effect would continue to pay that person's pension irrespective of his or her place of temporary or permanent residence. Although the Republika Srpska fund unilaterally revoked the agreement in 2002, it has continued to pay pensions to persons already recognised as its beneficiaries. The Federation fund has done likewise.
91. ECRI observes that, as a consequence of the different numbers of contributors and different replacement ratios in the two Entities, the amounts of pension entitlements also still differ, depending on the fund from which they are paid. This can act as a significant brake on persons moving from one Entity to the other, especially bearing in mind the different costs of living in different parts of the territory of Bosnia and Herzegovina. In 2003, the Human Rights Chamber of Bosnia and Herzegovina found this situation to be inimical to the goal of facilitating returns and emphasised that displaced person status could not serve as a justification for different treatment, especially where it carried with it a connotation of discrimination on ethnic grounds. The domestic authorities' failure to implement this decision was subsequently found to have breached the European Convention on Human Rights<sup>22</sup> and the steps necessary to execute the judgment of the European Court are currently being examined by the Committee of Ministers of the Council of Europe.
92. ECRI is concerned at this situation, in which pension entitlements remain tied to a person's place of residence at a specified time, irrespective of changes in circumstance such as the person's decision to return to their pre-war place of residence. It notes with concern that this situation moreover has a discriminatory impact on essentially ethnic grounds on persons who have already made the choice to return, and acts as an important obstacle to displaced persons seeking to return. While ECRI understands that resolving these problems may have important financial implications for the pension funds themselves, it stresses that discrimination on ethnic grounds cannot be allowed to persist, and considers that the issues at stake must be resolved as a matter of priority. It notes with interest that a number of options have already begun to be explored at both Entity and State level and hopes that these will soon bear fruit.
93. ECRI urges the authorities to put an end to instances of discrimination on ethnic grounds in the field of pension entitlements, and to take all the necessary legislative steps to ensure that new, similar cases do not arise in future.

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<sup>22</sup> Karanovic v. Bosnia and Herzegovina, application no. 39462/03, judgment of 20/11/2007; violation of Article 6 of the Convention.

## **V. Vulnerable Groups**

### **Minority returnees and displaced persons**

94. During the 1992-1995 war, more than two million people left their places of residence in Bosnia and Herzegovina and became either internally displaced persons or refugees abroad. Considerable efforts have been devoted since the end of the war to facilitating the return of these persons. In its first report, ECRI stressed that priority attention should urgently be devoted to ensuring the sustainability of returns, in order to put people who were enabled to return in a position where they were also enabled to stay. It made a series of recommendations aimed at ensuring the full protection of the human rights of returnees both as regards their personal security and their economic and social integration and freedom from discrimination, notably in the fields of access to unbiased and non-segregated education, access to employment and social security, and needs for reconstruction assistance for destroyed property.
95. As of December 2009, there were still approximately 113 000 displaced persons registered in Bosnia and Herzegovina (compared with the more than two million persons mentioned above), as well as an unspecified number of persons who fled during the war still living abroad. These figures however do not reflect the overall number of persons who have in fact returned to their pre-war homes: many of those who have successfully recovered the title to their property through the arrangements established under Annex VII to the Dayton Peace Agreement (Agreement on Refugees and Displaced Persons) and are no longer counted as displaced persons do not actually live in their property, either renting it out or having sold it. Moreover, in order to be recognised as a displaced person in Bosnia and Herzegovina, individuals must not only express the wish to return but also take specific steps in that direction, including applying for reconstruction of their destroyed property. Persons living in Bosnia and Herzegovina but permanently established in places outside their pre-war homes are thus not recognised as displaced persons. The actual number of persons who have physically returned to, and remained in, their pre-war homes is thus generally recognised to be considerably lower than the remaining numbers of displaced persons would suggest. The rate of returns has moreover slowed down considerably in recent years.
96. As part of efforts to facilitate returns, considerable resources have been devoted to the return and reconstruction of property. Today, most claims for the return of property have been processed. There is still a need to complete the remaining claims for the return and reconstruction of property, however, and to ensure the sustainability of returns when they occur. In this regard, ECRI is deeply concerned that minority returnees continue to face discrimination in all areas of daily life, including difficulties in access to health care, pensions and other forms of social protection. Many are elderly and vulnerable, but do not have medical insurance in the place of return and have only limited means of their own to pay for health care. For those still of working age, the lack of access to employment remains a serious problem. While unemployment affects the whole population of Bosnia and Herzegovina, the situation of returnees is compounded by discrimination in access to employment, in both the public and private sectors. Access to education for children also remains problematic. A lack of infrastructure, such as electricity or roads, is also a problem in some areas, and there also continue to be reports of minority returnees having been unable in some cases to access reconstruction assistance at the same level as the local majority population. While the number of violent attacks against individuals has declined in recent years, isolated incidents still occur, along with attacks against property either belonging to minority returnees or identified with the ethnic or religious group to which they belong. Such incidents, as well as virulent,

ethnically divisive political discourse in some areas, continue to create a climate of hostility and to contribute to a sense of intimidation and rejection of minority returnees.

97. ECRI is concerned that many of the difficulties encountered by returnees deter other displaced persons and refugees from returning. In addition, those living in informal housing before the war, in particular Roma, have been unable to benefit from the assistance provided in programmes for the return and reconstruction of property. For others, fifteen years after the end of the war, the passage of time constitutes an additional serious obstacle to return, the importance of which moreover increases as time goes on. Finally, ECRI notes that amongst remaining displaced persons, several thousand continue to live in collective temporary accommodation centres, with only basic living facilities. Many of these persons are unable to return because they are elderly, chronically ill or traumatised, and need specific solutions – such as local integration – adapted to their situation.
98. ECRI welcomes the adoption by the House of Peoples of Bosnia and Herzegovina on 24 June 2010 of a Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement. It notes the authorities' aim to ensure that the latter is fully implemented by 2014, an aim the authorities consider could be achieved with international assistance. ECRI also notes with interest that this work has provided an opportunity to examine previously untouched issues such as compensation for destroyed homes and local integration assistance for those for whom it is impossible to return.
99. ECRI recommends that the authorities take all necessary steps to remove the remaining obstacles to return. It underlines in this respect that while the number of displaced persons has diminished over the last fifteen years, the passage of time itself means such steps are all the more urgent.
100. ECRI strongly encourages the authorities of Bosnia and Herzegovina to provide reconstruction assistance to all returnees who require it and to ensure that all returnees, including minority returnees, have access to such assistance on an equal footing. It further recommends that they examine questions related to a lack in necessary infrastructures in areas inhabited by minority returnees, and take steps to address these issues and eliminate any discrimination found.
101. ECRI again urges the authorities of Bosnia and Herzegovina to take steps, including positive measures where necessary, to address the employment situation of minority returnees throughout the country. It recommends that in parallel, the authorities raise the awareness of public institutions, public companies and the private employment sector of the illegality of ethnically discriminatory practices.
102. ECRI again urges the authorities of Bosnia and Herzegovina to provide children of minority returnee families with access to education free of political, religious and cultural bias and discrimination, in integrated multicultural schools in their area of return.
103. ECRI urges the authorities of Bosnia and Herzegovina to eliminate discrimination against minority returnees in access to health care, pensions and other forms of social protection.
104. ECRI refers to its recommendations made elsewhere in this report regarding the need to combat racist violence and racism in public discourse, and emphasises their particular relevance to the situation of minority returnees.

105. ECRI encourages the authorities to take all necessary steps to ensure that the Revised Strategy for the Implementation of Annex VII to the Dayton Peace Agreement is fully implemented by 2014.

## Roma

106. According to a survey conducted in 2007, there are at least 76 000 Roma living in Bosnia and Herzegovina; they thus constitute the largest national minority in the country.<sup>23</sup> They are also the most disadvantaged group: as noted by ECRI in its first report, Roma in Bosnia and Herzegovina experience extreme poverty and marginalisation, compounded by prejudice and discrimination directed against them by society at large as well as by public authorities. Roma are seriously disadvantaged in all fields of life, including education, employment, housing, health and access to other public services. At the same time, they experience the same difficulties regarding political participation as all persons who do not identify themselves as belonging to one of the constituent peoples.
107. In its first report, observing that problems in this field greatly affected Roma persons' possibilities of exercising a wide range of rights, and created especially grave difficulties in access to health care and other social services, ECRI strongly urged the authorities of Bosnia and Herzegovina to address the situation of lack of documentation of the Roma population. ECRI observes that the flow-on effects of a lack of identity papers are serious: for example, a birth certificate must be presented in order to obtain other personal documents which themselves are required for registration with an employment office; this, in turn, is a prerequisite for unemployed persons to accede to health insurance. ECRI understands that all births in health-care institutions are automatically registered, but that many Roma children are born at home. In consequence, measures to resolve the lack of identification documents of Roma persons must not only address existing cases but also find ways to ensure that new cases do not arise.
108. ECRI welcomes the steps taken since its first report to address this issue. It notes in particular that in 2009, the Council of Ministers of Bosnia and Herzegovina decided to allocate 300 000 KM to the civil registration of Roma and the creation of a database on their needs. The process was launched in November 2009 and aimed to reach all Roma persons, in co-operation with Roma NGOs. This exercise comes in addition to other projects funded by the international community to assist Roma in obtaining identification documents and other papers necessary to enable full access to rights. ECRI notes in this context that these efforts are also needed to resolve issues of statelessness, which, in Bosnia and Herzegovina, essentially affect Roma. It understands that the legal framework for resolving cases of statelessness is at present unclear, and that no formal mechanism exists to establish statelessness; this creates additional difficulties in dealing with such cases.
109. ECRI strongly encourages the authorities of Bosnia and Herzegovina to pursue their efforts in the field of civil registration of Roma. It urges them to ensure that all Roma persons in Bosnia and Herzegovina have access to identity papers and are able to obtain all the other official documents they need to enjoy full access to rights.
110. ECRI recommends that the authorities take all necessary steps to ensure that a formal mechanism exists for establishing statelessness and that a clear legal framework for resolving such cases is in place.

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<sup>23</sup> See Introduction to the Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Fields of Employment, Housing and Health Care.



111. In its first report, ECRI strongly urged the authorities to address without delay the housing situation of the Roma population. It also urged the authorities of Bosnia and Herzegovina to make local authorities aware of the illegality of intentionally obstructing Roma repossession claims.
112. The authorities have emphasised that the laws and regulations governing reconstruction assistance recognise as potential beneficiaries of the assistance refugees from Bosnia and Herzegovina, returnee nationals of Bosnia and Herzegovina and displaced persons, without any distinctions based on ethnic origins, and that any discrimination on such grounds would be contrary to the law. ECRI notes that Roma have in some cases been unable to claim reconstruction assistance as their pre-war property was often not registered and they often do not have proof of ownership – although there have been allegations that non-Roma persons in similar situations have been treated more favourably. An additional problem for many Roma who lived in informal settlements or social housing before the war is that restitution cannot be claimed for such property. The Advisory Committee on the Framework Convention for the Protection of National Minorities has furthermore referred to allegations of slower reconstruction of destroyed Roma properties than those of other groups of the population, and a lack of responsiveness by the authorities to Roma requests for return or rehabilitation of damaged housing.<sup>24</sup> Roma representatives indicate that, for all these reasons, very few Roma who fled their homes during the war have been able to return.
113. Many Roma continue to live in informal settlements, which frequently lack access to basic utilities such as electricity, sewage treatment, waste disposal or drinking water. Forced evictions continue to occur, sometimes in the context of implementing local programmes to improve Roma housing, and in some cases without appropriate alternative accommodation being provided. In such cases Roma have little alternative in practice but to resort to building new illegal homes elsewhere. ECRI is deeply concerned that many Roma are thus without adequate shelter – a fact which is of concern not only in itself but also because it has a serious impact on the life chances of Roma, including their health status and their chances of obtaining an adequate education and subsequently finding employment. Against this background, ECRI welcomes the inclusion in the Action Plan on Employment, Housing and Health Care<sup>25</sup> of a series of measures designed to address the issues faced by Roma in the field of housing. This includes three main objectives: urban development and legalisation of individual housing, aiming to register existing property and creating the necessary legal framework and conditions for ensuring that future housing is built in accordance with the law; training and awareness-raising amongst Roma and the majority population to change attitudes and assist in the full integration of Roma at local level; and planning and building new housing through social, donor and credit programmes. ECRI notes with interest in this context that the Swedish International Development Cooperation Agency has donated funding of BAM 2 million for the purposes of providing housing for Roma.
114. ECRI urges the authorities to ensure that reconstruction assistance is provided without discrimination not only in law but also in practice, so as to ensure no Roma who wish to return to their pre-war homes are prevented from so doing by arbitrary decisions of local authorities.

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<sup>24</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities Second Opinion on Bosnia and Herzegovina, 27 April 2009, ACFC/OP/II(2008)005, § 88

<sup>25</sup> Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Fields of Employment, Housing and Health Care

115. ECRI strongly encourages the authorities to implement in full the Action Plan on Housing for Roma, so as to ensure that no Roma are deprived of adequate housing.
116. As regards the health status of Roma, the authorities have indicated that social and economic factors such as poverty, inadequate food and lack of access to health care facilities negatively impact Roma. Roma women's reproductive health is also reported to be problematic. ECRI notes with interest that the Action Plan for Roma Health developed as part of the Decade of Roma Inclusion includes positive action measures to ensure that Roma are able to enjoy fully the right of access to health care, as well as awareness-raising and preventive health measures such as immunisation programmes.
117. ECRI strongly encourages the authorities to implement in full the Action Plan on Roma Health, so as to ensure that Roma enjoy equal access to health care and to bring their health status into line with that of the rest of the population. It recommends that they take specific measures to address the particular disadvantages experienced by Roma women in this field.
118. In its first report, ECRI recommended that the authorities address the labour market position of the members of the Roma communities as part of a more global strategy to improve the situation of Roma. ECRI notes that unemployment remains a serious problem for the population of Bosnia and Herzegovina as a whole. Nonetheless, Roma are disproportionately affected by the lack of access to employment, both in the public and the private sector, and most Roma who lost their jobs during the war have not been re-employed by their former employers. Non-official sources indicate that up to 99% of Roma are unemployed; official estimates indicate that only 59% of Roma men and 20% of Roma women have at some time been employed, compared with 70% of other men and 43% of other women.<sup>26</sup> Roma representatives also observe that those Roma who do find employment in general hide their ethnic origins in order to avoid rejection by their employer or colleagues. This leads them to be cut off from their communities and also leaves other Roma with few role models to help nourish their own aspirations.
119. ECRI welcomes the development of an Action Plan for Roma Employment, as part of the Decade of Roma Inclusion. This includes five main objectives: the establishment of a database on Roma unemployment, to enable properly targeted measures to be designed; the adoption of specific programmes designed to stimulate the employment and self-employment of Roma; reviewing legislation with a view to eliminating discrimination and stimulating positive action; intensifying efforts to train and educate Roma, including training on job-seeking skills and on starting a business; and awareness-raising campaigns both amongst Roma, to help inform them of labour market needs, and amongst the general population and media, to help change their attitudes in this field.
120. ECRI strongly encourages the authorities to implement in full the Action Plan for Roma Employment. It emphasises in this context the importance of taking an integrated approach, to ensure not only that Roma have the necessary skills to find employment but that there are also employers ready to employ Roma workers.
121. In its first report, ECRI strongly urged the authorities to implement in full the Action Plan on the Educational Needs of Roma and Members of Other National Minorities. ECRI is concerned that Roma participation rates at school remain very low overall, with 76% of Roma reportedly never having attended or completed

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<sup>26</sup> CERD/C/BIH/7-8, § 92

primary school.<sup>27</sup> It notes that Roma children may experience difficulties in access to education due to a lack of identity papers or other necessary documentation, and other factors such as poverty, discrimination and harassment continue to mean they are still less likely than other children to attend or complete school. As noted by the Advisory Committee on the Framework Convention for National Minorities, drop-out rates remain high, especially among Roma girls, and Roma continue to be significantly under-represented at secondary school and in tertiary institutions.<sup>28</sup> The resulting high rates of illiteracy compound the difficulties experienced by Roma in gaining access to employment.

122. ECRI welcomes indications that, thanks to a number of measures taken in notably the framework of the 2004 Action Plan on the Educational Needs of Roma and Members of Other National Minorities in Bosnia and Herzegovina, enrolment rates of Roma children are gradually increasing. Some Roma communities report that all of their children are now attending schools. Measures are also in place to distribute schoolbooks free of charge and to provide financial support to Roma children who progress to secondary and higher education. ECRI has however received reports that the Action Plan is still not sufficiently known and that its implementation is not yet sufficiently monitored or evaluated.

123. ECRI recommends that the authorities pursue and strengthen the implementation of the 2004 Action Plan on the Educational Needs of Roma and Members of Other National Minorities. It recommends that they also evaluate in detail the impact of the measures taken to date, in order to ensure that any deficiencies are ironed out and that best practices can be shared.

124. In its first report, ECRI recommended that an overall strategy be designed in order to address in a comprehensive and multi-dimensional way the situation of the Roma population of Bosnia and Herzegovina. ECRI also recommended that representatives of the Roma communities be meaningfully involved not only in designing such a strategy, but also in its implementation, evaluation and, as necessary, development. It also pointed out that the lack of accurate data on the situation of the population affected the ability of the authorities to design measures aimed at promoting the effective equality of target groups, and made it very difficult to evaluate any such measures.

125. Since ECRI's first report, Bosnia and Herzegovina has joined the Decade of Roma Inclusion. In complement to the 2004 Action Plan on the Educational Needs of Roma and Members of Other National Minorities, an Action Plan for Addressing Roma Issues in the Fields of Employment, Housing and Health Care has also been drawn up. As can be seen from the specific aspects of this Action Plan referred to above, efforts are being made to address these issues holistically, including through the collection of necessary data, the examination of necessary changes to legislation and regulations, concrete measures to achieve progress in practice and awareness-raising measures to change attitudes both amongst the majority population and amongst Roma. ECRI welcomes these steps and hopes that they will provide the basis for measurable improvements in the situation of the Roma. It observes that considerable financial resources will be needed to achieve the desired results and that the authorities will therefore need to mobilise financial support through the budgets of all levels of government in Bosnia and Herzegovina as well as at international level.

126. ECRI also emphasises that given the serious disadvantages faced by this part of the population, progress may appear to be slow and a long-term approach

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<sup>27</sup> CERD/C/BIH/7-8, § 91.

<sup>28</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Bosnia and Herzegovina, 27 April 2009, ACFC/OP/II(2008)005, § 178

required. In such circumstances it is all the more important to monitor and evaluate the impact of the measures in place, in order to identify measures that are working well and strengthen those where the desired progress appears not to be being achieved. ECRI underlines the importance of ensuring that Roma representatives are actively involved in the monitoring, evaluation and, where necessary, strengthening or redesign of the measures in place, and welcomes the involvement of both the Advisory Board on Roma and the Council of National Minorities in this regard.

127. ECRI recommends that the authorities ensure that the necessary financial resources are available to implement the 2004 Action Plan on the Educational Needs of Roma and Members of Other National Minorities and the Action Plan for Addressing Roma Issues in the Fields of Employment, Housing and Health Care. It stresses that to achieve the goals set out in these Action Plans, financial support from all levels of government will be needed, and recommends that the authorities work to ensure that the necessary political support is also present.

128. ECRI urges the authorities to monitor and evaluate carefully the impact of the measures included in the Action Plans for Roma, in order to be able to adapt them where necessary and share best practices rapidly.

129. ECRI encourages the authorities to ensure the full involvement of Roma representatives, including the Advisory Board on Roma and the Council of National Minorities in monitoring, evaluating and adapting where necessary the measures set out in the Action Plans for Roma.

130. In its first report, ECRI recommended that the authorities ensure that all episodes of violence and manifestations of hostility against the Roma were thoroughly investigated and their perpetrators brought to justice. Little recent information appears to be available in this field. Hostile attitudes from some local authorities and communities nonetheless continue to be reported, including towards Roma refugees and asylum-seekers. There have been reports of police ill-treatment of Roma and a lack of interest by the police in investigating offences committed against Roma,<sup>29</sup> as well as occasional violent attacks by non-Roma against Roma, and frequent verbal abuse and threats.

131. ECRI again recommends that the authorities ensure that all episodes of violence and manifestations of hostility against the Roma are thoroughly investigated and their perpetrators brought to justice. It emphasises the role to be played by political and other leaders in systematically speaking out against such acts.

### **National minorities**

132. As noted in ECRI's first report, in April 2003, a Law on Protection of Rights of Persons belonging to National Minorities was adopted at State level. It contains a non-exhaustive list of 17 such minorities: Albanians, Czechs, Germans, Hungarians, Italians, Jews, Macedonians, Montenegrins, Poles, Roma, Romanians, Russians, Ruthenians, Slovaks, Slovenians, Turks and Ukrainians. Legislation necessary to implement the principles of this Law in practice has also now been adopted at Entity level: in December 2004 in the Republika Srpska and in July 2008 in the Federation of Bosnia and Herzegovina. The Advisory Committee on the Framework Convention for the Protection of National Minorities has noted that this legislation is now fairly well developed; however, its application continues to pose problems.<sup>30</sup>

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<sup>29</sup> See also below, Conduct of Law Enforcement Officers.

<sup>30</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Bosnia and Herzegovina, 27 April 2009, ACFC/OP/II(2008)005, § 11

- *Advisory bodies on national minorities*

133. The 2003 State Law on the Protection of Rights of Persons belonging to National Minorities provided for the establishment of a Council of National Minorities within the Parliamentary Assembly of Bosnia and Herzegovina. In its first report, ECRI strongly urged the authorities of Bosnia and Herzegovina to establish this body and its equivalents at Entity levels, and to ensure constant and meaningful co-operation with them. The Council of National Minorities at the State level, which has a purely advisory role, was finally set up in April 2008. The Council has since followed issues of importance to national minorities, such as the implementation of the Action Plan for Roma and of the *Sejdić and Finci* judgment. ECRI is however concerned at reports of problems regarding the appointment of national minority representatives to this body. As of March 2010, only 10 of the 17 recognised national minorities had been able to appoint representatives to the Council. ECRI hopes that any remaining issues will be rapidly resolved in the interest of having a fully operational Council of National Minorities at State level, in which all national minorities are able to have full confidence. It notes that this Council has proposed the creation of government office to deal with national minorities and that, while this proposal appears to have received support in principle, it has not so far been followed up with concrete action.
134. In 2007 the Assembly of the Republika Srpska established a Council of National Minorities within the parliament of the Republika Srpska. This is an advisory body composed of fifteen members appointed directly by national minorities. Since its creation, it has submitted a number of proposals to the authorities and to the Assembly of the Republika Srpska, which led to an increase in the budget attributed to national minority activities in 2008. A similar body was not established in the Federation of Bosnia and Herzegovina until December 2009. ECRI welcomes the establishment of these bodies and hopes that both will be able to play a significant role in ensuring that the concerns and interests of national minorities are duly taken into account at Entity level.
135. An Advisory Board on Roma, set up as a permanent advisory body to the Council of Ministers at the level of the State, and composed of nine Roma representatives and nine representatives of relevant State and Entity ministries, was established in 2002. ECRI welcomes the fact that this body has since been able to contribute to the drafting of the Action Plan of Bosnia and Herzegovina for Addressing Roma Issues in the Field of Employment, Housing and Health Care and that it is intended that it also contribute actively to monitoring the implementation of the Action Plan. ECRI notes nonetheless reports that a lack of human and financial resources may hinder the exercise of this role.
136. ECRI calls on the authorities at all relevant levels to resolve all outstanding issues with respect to the composition, functioning and resources of the various advisory bodies on national minorities, including the Advisory Board on Roma, so as to allow national minorities to participate effectively in and have an influence on public life at all levels, both within Entities and at State level.
137. ECRI encourages the authorities of Bosnia and Herzegovina to take steps to designate or create an office for national minorities, responsible for ensuring the effective implementation of policies adopted and decisions made with respect to national minorities.

- *Exercise of substantive rights of persons belonging to national minorities*

138. In its first report, ECRI encouraged the authorities of Bosnia and Herzegovina to co-operate closely with the representatives of national minorities in order to ensure that the provisions of the Law on National Minorities concerning education and all other aspects were duly applied.

139. ECRI notes that, outside the field of participation in political and public life,<sup>31</sup> the main preoccupations expressed by representatives of national minorities concern, on the one hand, the need for greater visibility of their languages and cultures – whether in school textbooks, public broadcasting or public life more generally – and, on the other hand, the limited possibilities for teaching in and of national minority languages in schools. While representatives of national minorities have welcomed amendments made to the State Law on National Minorities in 2005 and designed to relax the criteria for opening classes providing teaching in or of minority languages, ECRI notes that in practice the criteria remain difficult to fulfil and the number of classes in which minority languages are taught remains low. ECRI refers in this regard to the latest opinion on Bosnia and Herzegovina published by the Advisory Committee on the Framework Convention for the Protection of Minorities<sup>32</sup>, which examines these matters in detail.

140. ECRI again strongly encourages the authorities of Bosnia and Herzegovina to ensure that the provisions of the Law on National Minorities are duly applied. It recommends that they co-operate closely with the representatives of national minorities in this respect and draws the authorities' attention to the particular concerns of representatives of national minorities regarding the need to ensure the visibility of their languages and cultures as well as teaching of and in minority languages.

#### **Persons who do not wish to identify themselves with any constituent people or national minority**

141. As noted in ECRI's first report, the emphasis placed both in law and in fact on ensuring the full enjoyment of rights by persons belonging to one of the constituent peoples has left persons who do not identify themselves as belonging to one of these peoples in a situation of serious disadvantage. Aside from the specific situation of persons belonging to national minorities (examined elsewhere in this report), ECRI is concerned that persons who do not wish to identify themselves with any single constituent people or national minority (for example, children of mixed marriages), many of whom self-identify as Bosnians, are in many respects ignored both in the legal system in place and in practice. They cannot stand for election to positions for which identification with a single constituent people is required (for example, membership of the State Presidency or House of Peoples) and are ignored in power-sharing mechanisms and other policies and programmes implemented to ensure an institutional balance between constituent peoples. Moreover, the language of State and Entity constitutional and legislative provisions, under which these persons are only identified, as a means of distinguishing them from persons belonging to a constituent people, as "Others", appears to place them at a lower rank in society. As a result, persons who do not wish to identify themselves with any constituent people or national minority remain discriminated against or even invisible in law and ignored in practice, and do not enjoy genuine equality with other citizens of Bosnia and Herzegovina.

142. ECRI urges the authorities of Bosnia and Herzegovina to take all necessary measures to ensure that every person within the jurisdiction of the State, regardless of whether or not they identify themselves with any constituent people or national minority, is granted all the rights provided by law, and enjoys these rights not only in law but also in fact.

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<sup>31</sup> See above, Existence and Implementation of Legal Provisions - Provisions governing the electoral rights of persons belonging to national minorities; see also Advisory bodies on national minorities.

<sup>32</sup> ACFC/OP/II(2008)005

143. ECRI urges the authorities to ensure that all discriminatory language – including distinctions between constituent peoples and “Others” – is removed from all constitutional and legislative texts in force in Bosnia and Herzegovina.

### **Refugees and asylum seekers**

144. In its first report, ECRI urged the authorities of Bosnia and Herzegovina to cooperate closely with the United Nations High Commissioner for Refugees (UNHCR) concerning the status of refugees, especially those from Kosovo<sup>33</sup>, and to ensure that no person is forcibly returned to his or her country of origin contrary to the principle of non-refoulement and Article 3 of the ECHR. It strongly encouraged the authorities to provide protection to and cater for the needs of all refugees present on its territory. It urged the authorities to address all manifestations of hostility and discrimination vis-à-vis the inhabitants of reception centres, and to avoid using a discourse that may fuel such manifestations.
145. The majority of asylum-seekers in Bosnia and Herzegovina today are persons from Kosovo, almost all of whom are Roma. More than 50 000 people from the former Federal Republic of Yugoslavia were registered in 1998-1999 under a temporary admission regime, which was subsequently extended several times. 6000 persons applied for re-registration in 2002, and the numbers decreased thereafter. As from June 2003, only persons from Serbia and Montenegro whose last place of permanent residence was in Kosovo continued to be entitled to temporary admission. The regime ceased altogether on 30 September 2007; since then, persons resident in Bosnia and Herzegovina under the former temporary admission regime and unable to return to their homes in Kosovo have had to apply for international protection in the same manner as other asylum-seekers. As of March 2010, there were a total of 368 asylum-seekers in Bosnia and Herzegovina, of whom 272 previously held temporary admission status.
146. ECRI notes with concern that the Ministry of Security, which took over responsibility for refugee status determination from the UNHCR on 1 July 2004, regularly rejects asylum applicants from Kosovo, contrary to relevant UNHCR guidelines,<sup>34</sup> and that as a result, Roma who are entitled to international protection may be exposed to the risk of refoulement. Asylum-seekers are not entitled to work and must reside in one of two asylum reception centres. They have only very limited access to health care. ECRI notes with concern that many asylum-seekers from Kosovo have been living in Bosnia and Herzegovina for up to 12 years, but that little is done to facilitate their local integration despite close ties established with Bosnia and Herzegovina and the lack of an infrastructure in Kosovo that would permit the sustainable return of refugees. Hostile attitudes of local officials and the local population also continue to be reported. ECRI welcomes, however, the information that children resident in reception centres attend local schools.
147. Recognised refugees do not have access to facilitated naturalisation, as the time spent in Bosnia and Herzegovina as an asylum-seeker or on the basis of temporary admission does not count towards the acquisition of nationality. While they have the same right to work as citizens of Bosnia and Herzegovina, many

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<sup>33</sup> All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

<sup>34</sup> UNHCR's Position on Continued International Protection Needs of Individuals from Kosovo (June 2006), replaced by the UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo (9 November 2009).

Roma refugees suffer particular difficulties in access to employment.<sup>35</sup> Refugees from Croatia are also reported to experience marginalisation.

148. ECRI again urges the authorities of Bosnia and Herzegovina to ensure that no person is forcibly returned to his or her country of origin contrary to the principle of non-refoulement and Article 3 of the European Convention on Human Rights. It urges the authorities to ensure that asylum-seekers have proper access to social rights, including health care, and recommends that they actively counter all manifestations of hostility towards and discrimination against asylum-seekers.
149. ECRI urges the authorities to find durable solutions permitting real integration in Bosnia and Herzegovina for asylum-seekers who have been living for many years in Bosnia and Herzegovina with no genuine prospect of return, and in particular for persons who previously held temporary admission status.
150. ECRI recommends that the authorities amend the law to ensure that recognised refugees benefit from facilitated acquisition of nationality, in line with Article 34 of the 1951 Refugee Convention. It further recommends that they step up their efforts to facilitate the local integration of all recognised refugees.

## **VI. Antisemitism**

151. In its first report, ECRI urged the authorities of Bosnia and Herzegovina to counter the circulation of antisemitic material and stressed the role to be played by opinion leaders in society in consistently speaking out against any manifestations of antisemitism.
152. Civil society actors indicate that antisemitism is not a major feature of daily political life in Bosnia and Herzegovina but that such sentiments appear to be growing in pro-fascist groups and that dangerous antisemitic messages, as well as acts of vandalism targeting the Jewish community, surface from time to time, especially in relation to current events. Such acts or messages usually centre on events in the Middle East or on theories of conspiracies against Bosnian Muslims. Civil society actors indicate that such messages are not generally perceived as a danger by the relevant political actors and therefore their responses are mostly inadequate. Antisemitic publications are reportedly also still available in some bookshops.

153. ECRI again recommends that the authorities of Bosnia and Herzegovina counter the circulation of antisemitic material, including through the effective application of existing legal provisions against racism. It stresses again the role to be played by the various opinion leaders in society in speaking out against all manifestations of antisemitism, and refers the authorities to its General Policy Recommendation No. 9, on the fight against antisemitism, which includes a series of recommendations on measures they can take to strengthen this fight.

## **VII. Human Rights Education and Awareness-Raising**

154. In its first report, ECRI encouraged the authorities of Bosnia and Herzegovina to ensure that human rights education is introduced as a compulsory subject in all levels of schools throughout Bosnia and Herzegovina. ECRI notes that the subject Education for Democracy and Human Rights is taught in upper primary and secondary school (which starts from the age of sixteen years) and is a compulsory subject for which pupils receive a grade. A teacher certification programme for teachers responsible for this subject has also been developed. In addition, an Education for Peace curriculum endorsed, inter alia, by all thirteen Ministries of Education in Bosnia and Herzegovina, has been developed and was

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<sup>35</sup> See above, Discrimination in Various Fields – Employment.



due to be introduced in schools in September 2009. The aim of this programme is to mainstream education for peace by providing a framework within which all subjects are studied and which lays the necessary critical foundations for creating a culture of peace and of healing. ECRI welcomes these developments and emphasises the importance in all societies, but particularly in post-conflict societies, of ensuring that the education delivered to children of all ages encourages the appreciation of the diversity of society.

155. ECRI recommends that the authorities of Bosnia and Herzegovina ensure that compulsory human rights education is extended to all levels of schools Bosnia and Herzegovina. It encourages the authorities to ensure the Education for Peace curriculum is introduced in all schools as soon as possible.

#### **VIII. Conduct of Law Enforcement Officers**

156. In its first report, ECRI urged the authorities of Bosnia and Herzegovina to put an end to disproportionately frequent checks and occasional harassment of Roma by law enforcement officials. ECRI notes that since its report, there have again been allegations of problems with police treatment of Roma, including ethnic profiling practices, abusive raids on Roma settlements, accusations made against Roma by the police on the basis of scant evidence, and failures to conduct adequate investigations into crimes committed against Roma. There have also been reports of problems with police treatment of visible minorities. These concern in particular persons perceived by the police as Muslim extremists, who are reportedly not always treated on an equal footing. The police as well as prosecutors have also been reported to be reluctant to investigate crimes against religious minorities.

157. In its first report, ECRI encouraged the authorities to consider establishing an independent body entrusted with the investigation of all allegations of ill-treatment by police officers. ECRI notes that developments in this respect are closely linked to efforts to reform and unify the Entity-controlled police forces, a field in which progress has been slow. Police Standards Units at the Entity and Brčko District levels thus continue to have competence to investigate complaints against law enforcement officials. These have investigated several hundred complaints each year since ECRI's report and recommended disciplinary or criminal proceedings in a number of cases. They are however internal to the relevant Ministries of the Interior. ECRI has received no information as to whether there were any cases in which racial discrimination was alleged or found to have occurred.

158. ECRI encouraged the authorities, in its first report, to continue and strengthen their efforts to ensure ethnic diversity of the police and to ensure that groups other than the three constituent peoples are also covered by these efforts. ECRI regrets that there appears to have been little progress in this field since then.

159. ECRI recommends that the authorities of Bosnia and Herzegovina take all necessary steps to put an end to racial profiling practices. It again encourages them to consider establishing an independent body entrusted with the investigation of all allegations of ill-treatment by police officers and to intensify their efforts to ensure ethnic diversity of the police and to ensure that groups other than the three constituent peoples are also covered by these efforts. It refers the authorities to its General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing, which proposes a range of measures that the authorities can take to combat these phenomena, in particular in the fields of racial profiling, racial discrimination and racially-motivated misconduct by the police, the role of the police in combating racist offences and monitoring racist incidents, and relations between the police and members of minority groups.

160. Recent reports of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have referred to serious problems of inter-prisoner violence in some prisons in Bosnia and Herzegovina.<sup>36</sup> Other actors have indicated that some instances of such violence allegedly include ethnically motivated violence between inmates, a matter of direct concern to ECRI.

161. ECRI recommends that the authorities address all forms of racial discrimination within the prison system. It invites the authorities to investigate thoroughly, if this has not already been done, allegations of ethnically motivated inter-prisoner violence, and to implement the relevant recommendations of the CPT with all due speed.

## **IX. Monitoring Racism and Racial Discrimination**

162. The most recent census in Bosnia and Herzegovina was carried out in 1991. This census, as the “last census” referred to in numerous legislative and other texts, serves as the basis for defining measures to be taken with respect to national minorities, for example, or with respect to the ethnic composition of the workforce to be aimed for in the public sector. Due to the massive displacement of the population caused by the war, however, it is generally acknowledged that the 1991 census no longer accurately reflects the composition of the country’s population.

163. ECRI welcomes the indication from the authorities that preparatory work on a new census has been carried out by the Agency for Statistics, that they expect the necessary political consensus to be achieved in 2011, and that the census will be conducted. In this context, ECRI stresses the importance of data broken down by categories such as national or ethnic origin, religion, language and nationality in measuring whether some groups are adversely affected by given phenomena, whether programmes designed to assist certain groups are effectively achieving their goals, and whether new or different measures need to be taken to redress such situations. ECRI notes the concern expressed by many that to carry out a new census including data broken down by ethnicity before the return process is finalised may risk creating a situation in which, in practice, ethnic cleansing is rewarded. It stresses that such an outcome should be avoided: from ECRI’s perspective, the collection of disaggregated data must help to design measures better adapted to ensuring the equality in practice of all members of society, and must in no case be used as a means to seal a situation of superiority of one group over others. ECRI notes that consultation will be required with all the groups composing Bosnia and Herzegovina’s society, as well as goodwill and good faith on all sides, to create the necessary conditions for conducting a new census in Bosnia and Herzegovina. In the meantime, ECRI stresses that the lack of accurate data on the population of the country must not be used as a pretext by the authorities for failing to take positive measures specifically targeted to segments of the population that are obviously in need.

164. Finally, ECRI recalls that many persons in Bosnia and Herzegovina do not identify with any single ethnic group, and that this reality needs to be taken into account. It notes that introducing the possibility of identifying oneself as “Bosnian” would help to cater for the needs of these persons, and at the same time, would

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<sup>36</sup> Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 15 May 2009, CPT/Inf(2010)10; Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 March 2007, CPT/Inf(2009)25.

constitute a step towards the acknowledgment of full Bosnian democratic citizenship, the need for which is discussed further below.

165. ECRI recommends that ways of measuring the current situation of minority groups in different fields of life be identified, including in the context of the next census. It emphasises in this regard that the collection of data concerning people's national or ethnic origin, religion, language and nationality must be carried out with due respect to the principles of confidentiality, informed consent and voluntary self-identification of persons as belonging to a particular group.
166. ECRI further recommends that when collecting data disaggregated by national or ethnic origin, religion, language and nationality, in conformity with the above criteria, the option of identifying oneself as "Bosnian" also be provided.

## **X. The Need to Acknowledge Full Bosnian Democratic Citizenship**

167. In its first report, ECRI considered that there was a need gradually to move towards a system centred on the concept of full Bosnian democratic citizenship and where individuals are not forced to identify themselves ethnically in order to access rights or participate in the political or other processes. As highlighted in various parts of this report, ethnic origins continue to have a strong link to both the entitlement to and the enjoyment of certain rights in present-day Bosnia and Herzegovina.
168. ECRI notes, as it did in its first report, that the institutional structure put in place to ensure peace and stability through the Dayton Peace Agreement relies heavily on inter-ethnic power-sharing arrangements that at present cater essentially for the needs and interests of the three constituent peoples. ECRI understands that such an approach was considered necessary at the time to bring armed conflict to an end. It is deeply concerned, however, that, persons who do not identify with one of the three constituent peoples, either because they have other ethnic affiliations or because they are unable or unwilling to choose a single ethnic affiliation, are still in a position of serious disadvantage and are, in many cases, victims of ethnic discrimination. The existence of discrimination on the grounds of ethnic origin in the field of electoral rights has moreover been confirmed, as discussed above, by the European Court of Human Rights.<sup>37</sup>
169. ECRI strongly regrets that this situation – in which individuals unwilling to declare an affiliation to one of the three constituent peoples are deprived of certain rights – promotes the persistence of a society in which communities are divided along ethnic lines. This atmosphere permeates spheres of life well beyond the political, making returns of displaced persons in many cases unsustainable and at the same time marginalising persons who could act as bridges between communities. The fact that the institutional structure in place gives considerable weight to ethnicity and to the rights granted to the three constituent peoples serves to favour all the more those political parties that use national identity and ethnicity as a means to promote their own agendas and to delay the integration of the society of Bosnia and Herzegovina. Politicians moreover succumb all too readily to the temptation to place a blanket-style blame on other constituent peoples for every wrong or perceived wrong their own people suffer.
170. ECRI recognises that a measure of institutional balance between constituent peoples may still be necessary in the post-conflict context that still defines Bosnia and Herzegovina fifteen years after the end of a traumatic war. It is, however, convinced that solutions can be found to allow Bosnia and Herzegovina to move towards a system centred on the concept of full Bosnian democratic citizenship,

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<sup>37</sup> Sejdic and Finci – see above.

in which a minimum level of representation of the different groups composing Bosnian society is guaranteed, but individuals' ethnicity is no longer considered as the most relevant qualification for office. ECRI is firmly of the view that all parties concerned in Bosnia and Herzegovina should seize the opportunity presented by the Sejdić and Finci judgment of the European Court of Human Rights to work with new energy and a resolutely constructive approach towards redesigning the institutional arrangements of Bosnia and Herzegovina so as to promote equal participation by all members of society, whether they see themselves as belonging to a single constituent people or national minority, or as not affiliated to any one particular group.

171. ECRI refers to its recommendations earlier in this report, urging the authorities to amend the Constitution and electoral law so as to ensure that all citizens enjoy equal electoral rights – both the right to vote and the right to run for election –, whatever their ethnic origins. It urges the authorities at the same time to ensure that all persons within the jurisdiction of Bosnia and Herzegovina enjoy not only by law but also in fact, all the rights laid down by law, regardless of their ethnic origins.
172. ECRI urges the authorities as well as political leaders at all levels to engage in this process constructively, avoiding the temptation to seek short-term political gain by championing the rights of some at the expense of those of others, and instead seeking solutions in the long-term interests of all persons living in Bosnia and Herzegovina, based on the recognition of equal democratic citizenship of all. It urges the authorities to ensure that civil society and all relevant groups – including national minorities and persons who do not identify with any constituent people or national minority – are adequately involved in public debates and represented in formal discussions.

## INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the authorities of Bosnia and Herzegovina are the following:

- ECRI strongly recommends that the authorities of Bosnia and Herzegovina provide judges and prosecutors with initial and on-going training, as a matter of priority, on the Law on the Prevention of All Forms of Discrimination in particular and on issues pertaining to racial discrimination in general. It also recommends that training be offered to lawyers on the Law and on issues pertaining to racial discrimination more generally. It underlines that in line with the definitions of direct and indirect discrimination set out by ECRI in its General Policy Recommendation No. 7, this training should cover grounds such as “race”, colour, language, religion, nationality or national or ethnic origin.
- ECRI urges the authorities to bring to completion as a matter of priority their work to resolve all remaining cases of “two schools under one roof”. It emphasises that in so doing, the authorities should ensure not only that these schools are unified administratively but also that pupils are taught together wherever possible.
- ECRI urges the authorities to put an end to instances of discrimination on ethnic grounds in the field of pension entitlements, and to take all the necessary legislative steps to ensure that new, similar cases do not arise in future.

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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