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ECRI REPORT ON MONTENEGRO

(fifth monitoring cycle)

Adopted on 20 June 2017

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FOREWORD

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

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

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

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

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

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

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

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 23 March 2017; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's first report on Montenegro on 8 December 2012, progress has been made in a number of fields.

The authorities have improved protection against hate crime through a new provision making racist, homo- and transphobic motivation an aggravating circumstance. The Law on Prohibition of Discrimination explicitly prohibits racial discrimination and hate speech.

The Protector of Human Rights and Freedoms (Ombudsman) has been empowered to investigate complaints as well as to initiate and participate in court proceedings.

LGBT contact police officers have been established in all police stations to ensure reporting of violent attacks against the LGBT community.

The Law on Non-Contentious Proceedings was amended in May 2015 to introduce a procedure for late birth registration, particularly aiming at regulating the legal status of internally displaced Roma lacking identity documents.

The authorities adopted a new Strategy for Social Inclusion of Roma and Egyptians (the Roma Strategy 2016-2020), focusing on seven strategic areas: employment, education, housing, health care, legal status, social status and family care, and culture. The previous Roma strategies yielded some positive results: 58% of Roma children attend primary school, pupils now receive textbooks, school supplies, and financial assistance for transport and meals.

Following-up on one of ECRI's priority recommendations from its first report, the authorities made progress in closing down Konik camp by providing housing solutions to its residents.

Respect for LGBT rights and the level of acceptance towards LGBT persons in society have improved as a result of measures taken under the Strategy for improving the quality of life of LGBT persons (the LGBT Strategy 2013-2018).

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

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

There is no reliable data on hate speech and hate-motivated violence. Criminal action is ruled out too easily and most cases are treated as misdemeanors. The lack of prosecutions does not provide an effective deterrent against such crimes. The provisions on racist motivation as an aggravating circumstance are also rarely applied due to lack of knowledge and expertise among the judiciary in recognising hate crime.

The LGBT community is the most common target of hate speech and violence. LGBT persons have been the subject of derogatory comments both as individuals (in the work place or at school) or as a group (by opinion leaders or some church representatives). Social media in particular is used to attack LGBT persons. Prejudice against LGBT persons is still widespread and they experience different forms of discrimination in their daily lives.

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

Despite efforts towards the closing of Konik camp by the construction of housing units, Roma living in the area remain at risk of segregation. Their integration in society remains elusive.

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

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

The authorities should set up a comprehensive data collection system for racist and homo/transphobic hate crime (hate speech and violence incidents).^{*} They should also provide training activities for law enforcement officials and the judiciary on hate crime and the application of provisions regarding hate motivation.

Measures to combat hate speech on the Internet should be taken, in particular by intensifying the work of the cybercrime unit in the National Police.

The authorities should monitor the implementation of the Roma Strategy 2016-2020 and, in cooperation with civil society, evaluate the progress made and redefine its parameters as well as goals where necessary. Its sustainability should also be ensured by allocating appropriate funds.

ECRI recommends that the authorities institutionalise and increase the number of Roma mediators/assistants at pre-school and primary school level to ensure Roma children's attendance and decrease the risk of dropping-out.* They also should adopt an integrated approach to the Roma housing issue and take measures enabling desegregation, as well as ensure the Roma community's involvement in the decision-making concerning housing.

The authorities should continue implementing all the projects of the Action Plan of the LGBT Strategy 2013-2018 and include measures aimed at combating bullying against LGBT pupils in schools in order to promote a culture of tolerance and respect towards them.

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

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation against racism and racial discrimination as per General Policy Recommendation (GPR) No.7¹

- Criminal law

1. Criminal law provisions corresponding to ECRI's General Policy Recommendation No. 7 (GPR No. 7) on national legislation to combat racism and racial discrimination can be found in the Criminal Code. ECRI notes that many of the key elements of GPR No. 7 are covered and the following analysis focuses mainly on the lacunae.
2. Articles 370 (1) of the Criminal Code (CC) criminalises incitement to violence as well as hatred and incitement to discrimination is punishable under Article 443 (3), as per GPR No. 7 § 18a. While Article 443 (3) contains an open-ended list of grounds, Article 370 (1) does not mention the grounds of language and citizenship. Sexual orientation and gender identity are also missing².
3. Article 199 CC sanctions public exposure to mockery of a national or national and ethnic groups living in Montenegro. This provision seems to be a restriction compared with GPR No. 7 § 18b, according to which racist insults should also be punishable if they are directed against any person or grouping of persons, irrespective of their nature and place of residence. Article 168 on threats taken in conjunction with Article 42a, according to which hate based on race, religion, national or ethnic affiliation, gender, sexual orientation or gender identity of a person is considered an aggravating circumstance for all other offences, as per § 21 of GPR No. 7, complies with the requirements of GPR No. 7 § 18c but the grounds of language and citizenship are lacking.
4. Article 443 (3) CC criminalises the public expression, with a racist aim, of an ideology that claims the superiority of one group as per GPR No. 7 § 18d. While ECRI welcomes the amendments in 2013, in which the prohibited grounds were expanded to sex, disability, sexual orientation, gender identity or other personal characteristics, it notes that the grounds of language and citizenship are still missing.
5. The Criminal Code does not have a designated provision on the prohibition of public dissemination, distribution, production and storage of racist written, pictorial and other materials, as recommended in GPR No. 7 § 18f, despite the fact that Montenegro has ratified the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through a computer system.
6. In its first report, ECRI recommended to introduce a criminal law provision that expressly considers the racist motivation of an offence as a specific aggravating circumstance, in line with GPR No. 7 § 21. ECRI therefore welcomes the introduction of Article 42a CC in 2013 which establishes racial hatred as well as hatred on the basis of religion, national or ethnic origin, gender, sexual orientation or gender identity as aggravating circumstances for all offences.

¹ According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

² GPR No.7 does not contain these grounds, however, they are relevant for sections I.2, I.3 and II.3 of this report.

7. ECRI recommends that the authorities bring the Criminal Code into line with its General Policy Recommendation (GPR) No. 7 as indicated in the preceding paragraphs; in particular they should (i) include in all criminal law provisions aimed at combating racism and intolerance the grounds of language and citizenship, as well as sexual orientation and gender identity, (ii) criminalise racist insults against a person or a group of persons, irrespective of their domicile, and (iii) criminalise the public dissemination or distribution, or the production or storage aimed at public dissemination or distribution, with a racist aim, of written, pictorial or other material containing racist manifestations.

- **Civil and administrative law**

8. As regards the use of civil and administrative law to combat racism and racial discrimination, ECRI notes that Article 2 of the Law on Prohibition of Discrimination (LPD) prohibits direct and indirect discrimination, listing a large number of non-exhaustive grounds, including “race”, color of skin, national affiliation, social and ethnic origin, language, gender identity and sexual orientation, in line with GPR No. 7 § 4.

9. Regarding forms of discrimination, there is no mention of discrimination by association³ in the LPD, contrary to what is recommended in GPR No. 7 § 6.

10. The LPD has no provisions that correspond to § 8 of GPR No. 7 on the duty of public authorities to promote equality and to prevent discrimination in carrying out their functions. Moreover, although Article 8 of the Law on Public Procurement contains a reference to the principle of equal treatment, this reference merely obliges the contracting authorities not to discriminate among candidates during the call for tenders process, and not, as advocated in GPR No. 7 § 9, to ensure that parties to whom contracts, loans, grants or other benefits are awarded respect and promote a policy of non-discrimination.

11. There is no reference in the LPD or other legislation to suppression of public financing of organisations or political parties which promote racism, as per GPR No.7 § 16. As regards the possibility of dissolution of such organisations, according to § 17, provisions exist in the Constitution that prohibit organisations from instigating national, racial and religious hatred⁴ and make it possible for the Constitutional Court to ban them.⁵

12. ECRI recommends that the authorities amend the anti-discrimination legislation to remedy the gaps identified above in line with its General Policy Recommendation (GPR) No. 7, in particular, they should i) include discrimination by association, ii) introduce a legal provision placing public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions, iii) include the express duty to ensure that those parties to whom public authorities award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination, and iv) provide for the obligation to suppress public financing of organisations or political parties which promote racism.

³ EELN (2015): 37 and EELN (2016): 27. ECRI recalls that discrimination by association occurs when a person is discriminated against on the basis of his or her association or contacts with one or more persons designated by one of the enumerated grounds. This would be the case, for example, of the refusal to employ a person because s/he is married to a person belonging to a certain ethnic group. See para. 16 of the Explanatory Memorandum to GPR No.7.

⁴Article 55 of the Constitution.

⁵Article 149(6) of the Constitution.

- **National specialised bodies⁶**

13. The Protector of Human Rights and Freedoms (Ombudsman), which was set up in 2003, is an autonomous administrative body; it is independent and cannot be instructed in the performance of its duties; and its budget constitutes a separate title within the state budget. In its first report, ECRI recommended that the authorities give the Ombudsman investigative powers or the specific right to initiate, and participate in, court proceedings, in line with GPR No.7. Following legislative amendments in 2014⁷, the competences of the Ombudsman were expanded to include, *inter alia*, investigating complaints, giving opinions and recommendations on concrete cases of discrimination, providing advice to plaintiffs and initiating court cases or appearing as intervener. ECRI is pleased to note that the powers of the Ombudsman are now in line with its GRP No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and § 24 of its GPR No. 7.
14. For more information concerning the effectiveness of the Ombudsman, ECRI refers to section II.2. Topics specific to Montenegro.

2. Hate speech⁸

- **Data**

15. ECRI regrets that there is no reliable data on hate speech in Montenegro. According to the OSCE, data on hate crime, which do not distinguish between hate speech and hate-motivated violence, are collected by the Prosecutor's Office and the Supreme Court but no data have been submitted to OSCE-ODIHR's annual hate crime reporting system since 2009⁹ The Police also register incidents but the data collected by these different law enforcement bodies are not always classified in the same manner and are not broken down according to the hate motive. According to information provided by the authorities, in the period between 2011 and 2016, at least 86 incidents were reported to the police related to hate crime. Only six cases went on to prosecution under Article 370 and 443 of the Criminal Code; two of these are still pending; in two other cases, the charges were dropped by the prosecutor and the last two were sent to misdemeanor courts.¹⁰
16. ECRI recommends that the authorities put in place a system for collecting disaggregated data in order to provide a coherent, integrated view of the cases, by recording the specific bias motivation of racist and homo/transphobic hate crime (hate speech and violence) reported to the police as well as the follow-up given by the justice system, and that this data is made available to the public.

⁶ Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

⁷ Law on the Protector of Human Rights and Freedoms, Official Gazette of Montenegro No.18/ 14.

⁸ According to ECRI's GPR No. 15 on combating Hate Speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

⁹ OSCE-ODIHR, Hate Crime Reporting: Montenegro, <http://hatecrime.osce.org/montenegro>

¹⁰ Following the adoption of the Law on Courts of March 2015, the jurisdiction in criminal offences of racial and other discrimination referred to in Article 443 of the Criminal Code has been transferred to the high court before which the high state prosecutor is in charge to act. ECRI has received no statistics as to the number of cases since the adoption of this law.

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

17. As mentioned in its first report (§65), Montenegro, in general, is a good example of multi-ethnic tolerance and hate speech – at least in its most serious form – is an uncommon occurrence. However, ECRI has been informed that, albeit infrequent, intolerant political statements do occur¹¹, especially around election times. The OSCE reported a number of complaints concerning allegations of hate speech during the pre-election campaign in 2012.¹² For example, the then Prime Minister called his opponents “Chetniks” (the Serb paramilitary forces during the Second World War), implying that the opposition was influenced by Serbian nationalistic politics and local tycoons that joined forces to “strangle Montenegro”. During the same campaign, the then leader of the main opposition block referred to the ruling party as “a fascist sect and weed that should be eradicated”. The OSCE noted that, while the election campaign in 2016 was generally conducted with respect, the tone was still confrontational and personal attacks were launched by political parties.¹³
18. Reports suggest that derogatory public statements have been expressed in the context of the longstanding tensions, often with political overtones, persisting between the clergy and supporters of the Serbian Orthodox Church (SOC) and those of the Montenegrin Orthodox Church (MOC). In 2012, the SOC filed complaints against the Speaker of Parliament, a member of the Social Democrat Party, and the head of MOC for hate speech and insults directed against it. Furthermore, reports indicated that the SOC expressed intolerant speech against Muslims,¹⁴ criticising the revival of Islamic influence in the Balkans.

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

19. Reports indicate that some media in Montenegro have occasionally resorted to sensationalism, publishing material that could be considered to constitute hate speech.¹⁵ The Internet is increasingly used for the transmission of such material.¹⁶ Moreover, comments that contain abusive language, insults and hate speech that stir up interethnic division between Serbians and Montenegrins¹⁷ as well as hatred towards other groups, particularly LGBT people (see §§22-23 of this report), appear in different Internet portals. For example, online platforms are often used to describe Serbians as “oppressors” and “throat slicers” while supporters of the long-serving ruling party are referred to as “fascists” and “Shqiptari¹⁸ lovers”.¹⁹
20. In 2014, after violence erupted on the pitch at the Serbia-Albania football match in Belgrade, the front page of the Montenegrin edition of the Belgrade-based daily newspaper, *Informer*, called Albanians “Shqiptari”. Although the *Informer* issued an apology following reactions, the prosecutor initiated criminal proceedings against the editor-in-chief on the basis of violating the reputation of “minority people”.²⁰

¹¹ UN Special Rapporteur (2014): para. 65.

¹² OSCE (2012): 17.

¹³ OSCE (2017): 11.

¹⁴ US Department of State (2014): 1.

¹⁵ CommDH(2014)13: para. 120.

¹⁶ Montenegro Media Institute (2013): 7.

¹⁷ Ibid.

¹⁸ A derogatory and offensive term used for Albanians.

¹⁹ Montenegro Media Institute, *op.cit.*: 8.

²⁰ Balkan Insight (2014b).

21. Concerns have also been expressed at reports by the media conveying stereotyped or even degrading images of women.²¹ ECRI recalls the particular danger of hate speech targeting women on account of their gender which is often coupled with one or more other characteristics (religion, age or ethnic origin) and could pave the way to violence.²² The media should therefore pay particular attention not to perpetuate gender stereotypes and take measures to combat the use of sexist hate speech.

- **Hate speech targeting sexual orientation / gender identity**

22. ECRI notes with concern that LGBT persons, both as individuals (for example in the work place or at school) or as a group (by opinion leaders such as church representatives), are the main targets of hate speech in Montenegro.²³ Reports show that social media and LGBT dating sites in particular are used to attack and bully known and suspected LGBT persons anonymously.²⁴ In 2015, the director of the NGO, LGBT Forum Progress, was threatened and verbally abused by a group of three men.

23. Numerous incidents have been reported concerning hate speech against LGBT persons by representatives of the SOC. In 2016, during Orthodox New Year celebrations in Podgorica's main square, a SOC priest used blatantly homophobic expressions²⁵ against the LGBT community while making an allusion to the logo of Montenegro Pride.

- **The authorities' response**

24. ECRI considers hate speech particularly worrying not only because it is often a first step in the process towards physical violence but also because of the pernicious effects it has emotionally and psychologically on those who are targeted. Appropriate responses include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as prevention, self-regulation and counter speech.

25. As for criminal law responses, ECRI notes that hate speech is punished under Article 370 and 443 of the Criminal Code (see § 2,4). As for the reference in criminal law to incitement to hatred based on sexual orientation or gender identity, ECRI refers to its recommendation in § 7 of this report.

26. Despite the fact that hate speech is punished by law, ECRI takes note that very few cases go before the courts. Even very serious cases of incitement to racial and homophobic hatred are treated as misdemeanors and they seldom result in convictions.²⁶ For instance, in the case of the SOC priest (see § 23), no charges were pressed. In this respect, ECRI welcomes the different conclusion reached by the Ombudsman, which found the statements by the priest to contain elements of hate speech against members of the LGBT community and hence issued a recommendation for the priest to make a public apology and to refrain from further hate speech.²⁷ ECRI regrets to note that this recommendation has not been followed.

²¹ CEDAW (2011): para. 16.

²² See Preamble of GPR No. 15.

²³ European Parliament (2016).

²⁴ US Department of State (2015): 34.

²⁵ Priest J. Plamenac stated: "Let the Montenegrin moustache return from faggot asses back to where it was with our famous ancestors." He further stated in the daily "Pobjeda": "If they (LGBT people) grow mustache under their noses, and carry them on their buttocks – it's a mockery of the Montenegrins, who found mustache a symbol of honour, and used to kill those who would have touched their mustache."

²⁶ See also CERD (2014): para. 9.

²⁷ The decision of Ombudsman, No. 51/ 16, 9.5.2016.

27. The authorities informed ECRI that in the case of the daily newspaper *Informer* (see § 20), the editor-in-chief was convicted and ordered to pay a fine of 3 000 euros, the minimum penalty for such offences.²⁸ As for the verbal attacks against the director of LGBT Forum Progress (see § 22), the Podgorica Court sentenced all three men to three months imprisonment.²⁹
28. Regarding civil and administrative law responses, ECRI is pleased to note that in 2014, a definition of hate speech was introduced into the LPD under Article 9a. Furthermore, Article 20 of the LPD recognises acts of discrimination disseminated through public media as grave forms of discrimination.
29. The Law on Electronic Media, covering both radio and television in public and private broadcasting, in Article 48, prescribes that audiovisual media services, which includes electronic publications, must not incite, enable incitement or spread hatred or discrimination on the grounds *inter alia* of race, language, gender identity or sexual orientation. The Agency for Electronic Media (AEM), which is an independent public authority, oversees the media's compliance with the legal framework, and has the power to issue warnings, impose fines or suspend licenses temporarily or permanently.³⁰ It can also receive complaints from natural or legal persons. ECRI was informed that no sanctions have been imposed since 2011. While encouraging the AEM to issue sanctions whenever necessary, ECRI welcomes its adoption of a Rulebook for programme standards in electronic publications which includes prohibition of hate speech.
30. The Law on Media, which covers only printed media, in Article 23, prohibits the publication of information inciting discrimination, hatred or violence against persons on the basis of race, religion, national origin, ethnic group, gender and sexual orientation. ECRI observes that the media community in Montenegro remains divided over the creation of one authority responsible for monitoring and upholding professional and ethical standards in journalism. Despite the existence of two self-regulatory bodies - the Media Council for Self-Regulation (Media Council) and the Self-regulatory Council for Local Press - some mainstream media have also introduced their own media ombudsman, whereas many others have remained outside of any self-regulatory process. In this fragmented environment, the Media Council appears to be the only active organisation in charge of monitoring compliance with the Code of Media Ethics that has a specific provision on prohibiting hate speech.³¹ ECRI was informed that the Media Council could not perform any monitoring activities in 2015 due to lack of funds but received 42 complaints for breach of the Code of Ethics. The Ombudsman also stated that the data provided by the Media Council show that printed and electronic media often violate human rights by publishing inaccurate information, using hate speech, and spreading ethnic hatred.³²
31. ECRI recommends that, without interfering with the independence of the media, the authorities encourage the latter to ensure better compliance with ethical standards as well as provide training to this effect. ECRI also recommends that the authorities initiate an awareness-raising campaign jointly with the media self-regulatory bodies on preventing and combating hate speech.
32. As regards the Internet, Montenegro ratified the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems in 2010 and it came into force in the country in the same year. ECRI notes that the National Montenegrin

²⁸ Balkan Insight (2015a).

²⁹ ILGA Europe (2016): 122; Balkan Insight (2015d).

³⁰ <http://www.ardcg.org/index.php>

³¹ Principle 5. The new Code of Ethics was adopted in April 2016, Balkan Insight (2016).

³² The Ombudsman (2014): 34.

Computer Incident Response Team (CIRT) has been established under the Ministry of Information Society and Telecommunications to take down and remove illegal content in cooperation with Internet service providers. A cybercrime division has also been set up in the National Police. However, according to NGOs, complaints of threats and incitement to hate, in particular in social networks, which mostly target LGBT persons, are usually dismissed or not investigated properly by the police, mainly due to lack of capacity or because they are considered insignificant.

33. ECRI recommends intensifying the work of the cybercrime unit and providing it with appropriate technical and human resources, as well as training, to combat hate speech on the Internet.
34. Regarding training, the authorities adopted, in cooperation with the OSCE, a plan for application of the anti-discrimination legislation, which included an education plan offering various training activities.³³ Seminars have also been organised under OSCE-ODIHR's Training against Hate Crimes for Law Enforcement (TAHCLE) programme during 2013-2014.³⁴ While these activities have helped enhance the capacity of law enforcement bodies, the state prosecution and judiciary have stressed that they continue to experience problems – and to certain extent confusion - in identifying hate crime/speech and applying the legislation. ECRI notes that, in spite of the drastic increase in its budget in 2016 (an increase of 135.2% compared to 2015), the Judicial Training Centre- which provides initial and in-service training- still has to rely on donor support for specialised training.
35. ECRI recommends that the training activities for law enforcement officials and the judiciary on hate crime are scaled up. Such training should cover homo-/transphobic hate crime. ECRI also recommends that the authorities carry out an impact assessment to evaluate the training to establish to what extent it helps hate crime to be identified effectively, and, if necessary, adjust it.
36. ECRI considers that political and public figures should take a strong stand against intolerant statements by means of counter speech even if these do not reach the level required for criminal sanctions. ECRI has little evidence that public figures engage actively in counter speech. As regards the homophobic statements of a SOC priest (see § 23), there was no official response by the Serbian Orthodox Church. However, there are some examples of good practice. For example, in 2012, the then Prime Minister strongly condemned the spread of hate speech against the LGBT community and other vulnerable groups, and urged the media not to contribute to these phenomena through their editorial policies.³⁵
37. ECRI recommends that the authorities discuss with the leadership of the Serbian Orthodox Church ways in which the Church could use its moral standing to prevent and combat hate speech, including against LGBT persons, and ensure that their representatives refrain from making derogatory comments.

3. Racist and homo/transphobic violence

- Data

38. There is no coherent data concerning racist or homo/transphobic violence. ECRI was informed by the authorities that out of 86 incidents³⁶ reported to the police related to hate crimes (see § 15), only 12 concerned violence against persons or

³³ This Plan is part of the commitments under Montenegro's Action Plan for Chapter 23 on Judiciary and Fundamental Rights of EU Accession.

³⁴ OSCE (2013).

³⁵ Government of Montenegro (2012).

³⁶ During the period between 2011 and 2016.

property and were prosecuted, primarily under Article 168 (endangering safety) and 399 (violent behavior) of the Criminal Code. ECRI notes that there is a discrepancy between the data provided by the state authorities and NGOs. For example, according to LGBT Forum Progress,³⁷ 218 incidents of hate crime and discrimination were reported to the police just for the period January 2013 to March 2014. As stated earlier (§ 15), there is no data available under the OSCE/ODIHR annual hate crime reporting system.³⁸ ECRI refers to its recommendation in § 16 of this report.

- **Racist violence**

39. As mentioned in its first report (§ 72), ECRI is pleased to note that incidents of racist violence based on ethnic or religious grounds are still rare.³⁹
40. Violent incidents with a possible racist motive in football matches have been reported. For example, in March 2015, during a game in Podgorica between the Russian Federation and Montenegro, Montenegrin fans hit the Russian goalkeeper with a flare which caused serious bodily injury. The match was eventually called off after fans endangered the safety of players by throwing other objects onto the pitch.⁴⁰ The spokesperson of the fans accused Serbians living in Montenegro “who preferred to support the Russian team”⁴¹ and claimed that the violence was sparked by their behavior. Similar incidents took place in the country during other international football matches, notably the qualifiers for Euro 2012 and the 2014 World Cup.⁴²
41. ECRI notes with particular concern that Roma have also been the targets of racist violence. For example, in May 2016, a 14 year old Roma boy was brutally attacked in the street by two men in Podgorica. After the scene was captured on video footage and was disseminated by social media, the police arrested the perpetrators and the prosecutor brought charges of abuse.⁴³

- **Homo-/transphobic violence**

42. LGBT and human rights activists agree that homo/transphobic violence remains a serious problem in Montenegro. Studies suggest that in a society where homosexuality is still predominantly seen as an immoral and unnatural phenomenon, the issue of hatred and hostility against LGBT persons is extremely present.⁴⁴ The prevalence of stereotypes and prejudice against LGBT persons render them targets of violence.⁴⁵ In a public opinion poll conducted in 2015, 28% of the LGBT participants in Montenegro stated that they had suffered physical violence because of their sexual orientation or gender identity.⁴⁶
43. In July 2013, the first LGBT pride organised in Budva was marked by violent attacks of anti-LGBT protesters. Some 32 people were arrested after clashes between protestors and the police, resulting in several injuries. Similar acts of violence also took place during the Podgorica Pride in October 2013 where 60 persons were arrested. According to reports, there were more than 500 protesters, mostly football hooligans, who hurled rocks and bottles at the

³⁷ Zeković et al (2014): 7-8.

³⁸ OSCE-ODIHR, Hate Crime Reporting: Montenegro.

³⁹ OSAC (2016).

⁴⁰ Balkan Insight (2015a).

⁴¹ Le Courrier des Balkans (2015).

⁴² Balkan Insight (2015a).

⁴³ RomaTimes (2016).

⁴⁴ Zeković et al. (2014), *op.cit* : 6-7.

⁴⁵ UN Human Rights Committee (2014): 3.

⁴⁶ NDI (2015).

marchers who only numbered several dozen people. Following the Budva Pride, one of the country's leading LGBT activists, the then director of LGBT Forum Progress, Zdravko Cimbalević, fled the country due to constant death threats and was granted asylum in Canada.⁴⁷

44. Various sources indicate that the number of individual attacks against the LGBT community rose during the years 2014 and 2015⁴⁸ due to their increasing visibility. Several incidents of damage to property, as well as incidents of physical assault and battery⁴⁹, have been reported. For example, during 2014, the LGBT social centre in Podgorica was attacked 20 times in total, with stones thrown, windows broken and tear gas bombs used.⁵⁰ In the same year, the director of LGBT Forum Progress was attacked 19 times.⁵¹

- **The authorities' response**

45. The authorities have taken some measures to deal with racist and homo/transphobic violence, although these can, so far, not be considered fully satisfactory. Since 2013, some positive trends have, however, become visible, as ECRI points out below, and it encourages the authorities to continue and intensify their efforts.
46. ECRI recalls the legal amendments to the Criminal Code (CC) in 2013 as noted in § 6 above. It also takes positive note of a new provision under Article 399a CC that criminalises violent behaviour at a sport event or public assembly which causes national, racial, religious or other hatred or intolerance.
47. However, concerns have been expressed about the proper application of these provisions. Civil society organisations have stated that hate-motivated violence has not always been classified consistently and the bias motivation is mostly not specified. In fact, the majority of cases reported, particularly the violent clashes⁵² in Budva and Podgorica prides (§ 43), have been treated only as misdemeanour offences under the Law on Public Order and Peace, whereas there was evidence of more serious criminal behaviour, including hate crimes.⁵³ According to the data provided by NGOs, only one criminal charge brought for serious bodily injury during the Podgorica Pride⁵⁴ and the proceedings under misdemeanour charges concluded with the imposition of fines varying from 100 to 700 euros.⁵⁵ Reiterating the crucial importance of effective investigation and prosecution⁵⁶ as well as deterrent sanctioning of all criminal offences motivated by racial or homo/transphobic hatred, ECRI notes the limited outcome of prosecutions with concern and considers that this might send a wrong signal to the public while creating a culture of impunity.
48. As noted above (§ 6), the aggravating circumstance of racist and homo/transphobic motivation can now be invoked in relation to any offence to increase the punishment. However, the authorities have stated that Article 42a has been applied only once in 2015. This could be partly explained by lack of knowledge and expertise among the judiciary in understanding and recognising hate crime dynamics. Although training has been provided by the Judicial

⁴⁷ CoE PACE (2015): 19.

⁴⁸ US Department of State (2015): 34-35.

⁴⁹ Zeković et al, *op. cit.*: 27-28, 47-48, 98-99, 112-113, 117-118, 168, 176.

⁵⁰ CommDH (2014)13, *op.cit.*, para. 78-81.

⁵¹ ILGA-Europe (2015): 119.

⁵² AlJazeera English (2013).

⁵³ On a similar note, see CommDH (2014)13, *op.cit.* para.80.

⁵⁴ Amnesty International (2014): 23.

⁵⁵ On the basis of information provided by state authorities.

⁵⁶ Similar observations were made by the UN Human Rights Committee. See UN HRC (2014): para. 8.

Training Center (§ 34), there is a clear need for intensifying such programmes in order to prevent under-qualification of criminal offences. In this respect, ECRI refers to the case-law of the European Court of Human Rights which obliges states to take all reasonable steps to establish whether violent incidents were racially motivated⁵⁷, a principle which ECRI considers to be applicable to other hate crime crimes, including homo/transphobic ones.

49. ECRI recommends that the question of a racist and/or homo-/transphobic motivation in cases of violent incidents is made an integral part of investigations, particularly through providing clear instructions to police, as well as judicial proceedings from their very beginning. ECRI also recommends that the authorities offer training to judges and prosecutors on the application of Article 42a of the Criminal Code on racist and homo/transphobic motivation as an aggravating circumstance.

50. ECRI welcomes the reaction of the authorities to some of the violent incidents mentioned above. For instance, the Ministry of Human and Minority Rights and the Ombudsman publicly condemned the attack on a Roma boy (§ 41) and urged the authorities to ensure that it was effectively investigated and the perpetrators properly prosecuted. After the criminal proceedings, the perpetrators were sentenced to six and seven months imprisonment, respectively.⁵⁸ Article 42a, however, was not applied.

51. Lastly, ECRI notes with satisfaction the constructive dialogue established between the authorities and the LGBT community since the adoption of the “Strategy for improving the quality of life of LGBT persons (2013-2018) (LGBT Strategy)” in 2013. In particular, ECRI welcomes the creation of local contact points – LGBT contact police officers - in all police stations to ensure reporting of cases against the LGBT community⁵⁹ and the training provided to the police on issues related to equal treatment and non-discrimination, in cooperation with LGBT NGOs.⁶⁰ ECRI considers these initiatives as very positive steps in tackling the problem of under-reporting that has been frequently observed among the LGBT community.

4. Integration policies

- Data

52. According to the 2011 census,⁶¹ the ethnic structure of the population in Montenegro includes the following: Montenegrins (278 865), Serbians (178 110), Bosniaks (53 605), Albanians (30 439), Muslims (20 537), Croats (6 021), Roma (6 251; the Council of Europe estimate is 20 000), Egyptians (2 054), Macedonians (900) and others (3 358).

53. The country does not have an overall integration strategy covering all minorities.⁶² The Advisory Committee on the Framework Convention for the Protection of National Minorities stated in its latest report⁶³ that a climate of tolerance and

⁵⁷ *Natchova and others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 6.7.2005, §§ 160 to 168; *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14.9.2010, § 81.

⁵⁸ Podgorica Court Decision- K.br.395/16, 9.9. 2016.

⁵⁹ Government of Montenegro, UPR (2015): 56.

⁶⁰ For instance, the Memorandum of Understanding and Cooperation with the NGO LGBT Forum Progress NGO *Juventas* significantly improved the communication between the Police officers and members of the LGBT community.

⁶¹ Statistical Office of Montenegro (MONSTAT), 2011. The total population is 620 029.

⁶² For further details on issues concerning national minorities, please consult the Second Opinion on Montenegro (2014) of the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM).

⁶³ CoE, FCNM Advisory Committee. 2014.

dialogue generally prevailed in Montenegro, but it deplored the persisting negative attitudes and prejudice against the Roma minority.⁶⁴

- **Policies on Roma**

54. Roma remain the most vulnerable and marginalised group in Montenegro. Based on the estimates of civil society, the Roma community, including “displaced persons” from countries of the former Yugoslavia countries and “internally displaced persons” (IDPs)⁶⁵ from Kosovo⁶⁶, continues to face serious socio-economic problems. In March 2016, the authorities adopted a new Strategy for Social Inclusion of Roma and Egyptians (2016-2020) (Roma Strategy) which is the latest in a series of strategic documents⁶⁷ on Roma integration. ECRI welcomes the fact that the document entails a comprehensive strategy covering key areas such as education, employment, housing, health care and legal status to be implemented through annual action plans.⁶⁸ While the Strategy has well-defined measures, not all of them have success indicators to measure progress.
55. Although it is too early to assess the results of the new Strategy, some data are available for evaluating the previous integration strategies. ECRI notes however that the available data are fragmented and not always up to date, mostly produced as a result of cooperation projects with international organisations such as UNICEF, UNHCR and the EU. Official progress reports⁶⁹ on the previous strategies primarily consist of a description of the activities implemented or planned and lacking any measurement of their impact. As expressed by NGOs⁷⁰, unavailability of disaggregated equality data makes it difficult to track and evaluate progress in implementation. ECRI therefore encourages authorities to improve the capacity for collecting accurate statistics and increase the use of administrative data.
56. ECRI recommends that the authorities, in cooperation with civil society, conduct a thorough evaluation of the implementation of the Roma Strategy (2016-2020) on an annual basis in order to measure its impact and redefine its parameters and goals where necessary. In this context, they should strengthen the collection of equality data on Roma, in particular in the fields of education, employment, housing and health, while ensuring respect for the principles of confidentiality, voluntary self-identification and informed consent, as set out in paragraph 14 of its General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma.
57. Despite the existence of a Commission for Monitoring chaired by the National Coordinator appointed by Government, the implementation of the various programmes in the Roma Strategy remains the responsibility of individual ministries (at least nine). This makes it difficult to guarantee a comprehensive approach to Roma integration. Moreover, while the Ministry of Human and

⁶⁴ While members of the Roma, Ashkali and Egyptian minorities (RAE) identify themselves separately, they are defined as “Roma and Egyptians” in official policies. ECRI will use the umbrella term “Roma” in this report.

⁶⁵ Montenegro does not recognise “displaced persons” (DPs) coming from Bosnia and Herzegovina and Croatia, and “internally displaced” (IDPs) persons fleeing Kosovo, as refugees. Roma are mostly IDPs from Kosovo.

⁶⁶ All reference 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.

⁶⁷ These include a national Strategy as part of Decade of Roma Inclusion (2005-2015) initiative,

⁶⁸ The Action Plan for 2016 has already been adopted.

⁶⁹ Government of Montenegro (2015).

⁷⁰ Decade of Roma Inclusion (2005-2015): 7.

Minority Rights (MHMR)⁷¹ has a special budget line for the Roma Strategy, the other ministries do not have earmarked funds; this makes it hard to calculate or even to estimate the financing available for Roma integration measures. In addition, there are doubts about the long-term sustainability of these measures, since they rely almost exclusively on EU⁷² and other donors' funds.

58. ECR recommends that the authorities set up a robust monitoring procedure for the implementation of the Roma Strategy and ensure its long-term sustainability by clearly allocating appropriate funds.

- **Policies' results**

59. As various reports, including ECRI's first report (§§ 103-104) indicate, an overarching problem is the fact that many Roma, particularly IDPs (see § 54), lack identity documents and birth certificates, and seldom register with the authorities. This hinders their access to rights such as education, employment and health care. Out of 4 312 persons declared to be stateless in the 2011 census, 1 649 were Roma.

60. The 2011 Law on Foreigners and the national strategy⁷³ adopted to regularise the legal status of IDPs provided two solutions for their integration: either through obtaining the status of "foreigner with permanent residence" which entitles them to access social rights and public services or voluntary return to their place of origin. The Ministry of Interior (Mol), together with UNHCR and OSCE, has taken steps to address the problem, and significant progress has been made. According to Mol statistics, by the end of December 2016, a total of 14 243 applications were received and 13 614 persons were granted foreigner status with permanent or temporary residence. Mobile teams have also been deployed to travel to areas where Roma IDPs live and provide assistance to resolve their legal status issues.⁷⁴ In this respect, a joint commission established among the Mol, Ministry of Labour and Social Welfare (MLSW) and UNHCR has dealt with individual applications of Roma IDPs who have encountered problems due to discrepancies between their Montenegrin IDP cards and documents obtained in their country of origin. By the end of April 2016, this Commission received 273 applications: while 177 applications were positively solved, 33 still require additional documents for verification, and 7 were suspended as the applicants did not have IDP status in Montenegro or returned to Kosovo.⁷⁵ It is estimated that there are still at least 600 to 650 Roma IDPs without any identity document.⁷⁶ While the Roma Strategy sets further measures, in cooperation with international donors for resolving legal status, ECRI encourages the authorities to assume full responsibility in finalising all pending applications with dedicated resources.⁷⁷

61. Moreover, in May 2015, the Law on Non-Contentious Proceedings was amended to introduce a procedure for late birth registration, particularly aiming at regulating the legal status of Roma IDPs born outside Montenegro. While ECRI welcomes this, it is concerned that Roma may not benefit from it due to problems experienced in accessing free legal aid. Although the Law on Free Legal Aid

⁷¹ The decrease of the allocations for the Roma Strategy is noticeable. The amount spared for the Roma Strategy within the MHMR was 180 198 EUR in 2014 whereas it was 156 974 EUR in 2017.

⁷² For instance, under IPA (the Instrument for Pre-Accession Assistance) Action Plan 2015, which is the streamlined mechanism created by the EU, 1 000 000 euros were allocated for measures aiming to promote and protect human rights of Roma, Egyptians and other vulnerable groups in the country.

⁷³ The Strategy for Durable Solutions of Issues regarding Displaced and Internally Displaced Persons in Montenegro (2011-2015).

⁷⁴ ECRI was informed by the authorities that during 2014 and 2016, 11 visits were made to the Konik camp and other Roma settlements in the country. During these visits, 1 335 IDPs were provided legal and administrative support.

⁷⁵ UNHCR (2016).

⁷⁶ Roma Strategy: 67.

⁷⁷ Especially given that UNHCR foresees its operational disengagement on this issue by the end of 2017.

defines stateless persons lawfully residing in Montenegro as beneficiaries of free legal aid, this covers only judicial proceedings, not administrative ones, such as late birth registration for persons at risk of statelessness.

62. ECRI recommends amending the Law on Free Legal Aid to enable Roma at risk of statelessness to benefit from it during the late birth registration procedure.
63. The available data, although limited, as noted above, suggests that earlier strategies have resulted in significant and visible, but insufficient changes. The following paragraphs focus on three key areas in the Roma Strategy to illustrate the current situation. As regards education, several measures were taken under different strategies⁷⁸ for the educational inclusion of Roma children through the provision of free textbooks⁷⁹, school supplies and transportation services for primary school pupils as well as scholarships for secondary school⁸⁰ and university students, in cooperation with Roma Education Fund. These also include the special measures entitling Roma students to enroll at university regardless of grades. ECRI was informed that, as of October 2016, there were 20 Roma students enrolled at university.
64. As stated in its first report (§ 38), ECRI considers that increasing Roma attendance at pre-school facilities and enabling them to learn the Montenegrin language before entering primary school is one of the best ways to counter segregation and integrate Roma pupils in mainstream schools. According to UNICEF, just 19% of Roma children aged three to five were attending pre-school (compared to 52% in the general population) in 2014.⁸¹ The Roma Strategy considers that this rate stands at 21% in 2016 and it aims at increasing it to 40% by 2020. In June 2016, the Ministry of Education initiated in nine cities⁸² a two-week preparatory kindergarten programme for Roma children who were not already in the education system. Given the widespread poverty among Roma families, ECRI is particularly pleased to note the recent amendments in the Law on Preschool Education providing for pre-school free of charge, which it hopes would be a successful incentive for Roma. Despite these measures, ECRI considers that sustained efforts should continue to ensure that preschool education is made available to all Roma children. Furthermore, measures conducive to an inclusive environment in pre-school facilities must be created. For instance, ways to improve pupils' language skills in Montenegrin⁸³ must be found.
65. ECRI welcomes the fact that the number of Roma attending compulsory primary school increased to a level of 58%⁸⁴, but regrets that the drop-out rate still remains high and the completion rate of primary school is only 29%.⁸⁵ Data suggest that Roma children are most likely to drop out at age 10 and the highest percentage of out-of-school children is among those aged 10–14 years.⁸⁶ As a result, less than half of Roma children who finish primary school enroll in

⁷⁸ Such as the Strategy for Development of Primary Education (2012-17) and the Strategy for Inclusive Education (2014-2018) in parallel with the Roma Strategy. Projects financed by international donors that were run by organisations like Roma Education Fund (REF) and HELP also played an important role.

⁷⁹ The purchase of textbooks for Roma pupils from first to ninth grade are financed through funds provided by the Ministry of Human and Minority Rights and the Ministry of Education.

⁸⁰ According to information provided by the authorities, all Roma pupils who submitted a request were awarded a scholarship in the 2016-2017 school year (95 out of 112 Roma pupils in total enrolled at secondary school level).

⁸¹ UNICEF (2014).

⁸² Bar, Tivat, Herceg Novi, Kotor, Cetinje, Nikšić, Podgorica, Berane and Bijelo Polje.

⁸³ According to UNICEF, only in one kindergarten in Vrela Ribnicka (Podgorica), with the support of Roma Education Fund, a Roma mediator has been engaged for teaching Montenegrin to Roma pupils.

⁸⁴ There were 1 617 children attending primary school in 2016, a three-fold increase compared to 2002.

⁸⁵ MONSTAT / UNICEF (2013): table ED 53 (b) ISCED.

⁸⁶ *ibid.*

secondary school, with a completion rate of 8% (compared to 75% in the general population).⁸⁷ NGOs stated that the drop-out rate among Roma girls is higher due to early marriages. ECRI recalls that girls are particularly vulnerable in access to education due to the intersectionality of gender and poverty and therefore, encourages the authorities to take effective measures to combat gender stereotypes and prevent early marriages. In this respect, ECRI is pleased to note that the Roma Strategy envisages a measure to this end (Objective 6.4) which should include gender disaggregated data.

66. ECRI considers it important that the authorities intervene effectively to counter school absenteeism for the long-term integration of vulnerable groups such as Roma. While noting the local commission responsible for preventing the drop-out of Roma pupils in primary schools in Podgorica as good practice⁸⁸, ECRI regrets that there is no systemic monitoring mechanism available in all schools across the country. In this respect, it points out the important role that Roma Mediators/Assistants have been playing in following up cases of drop out and acting as an intermediary between schools and Roma families. Despite their positive impact, Roma Mediators/Assistants have been recruited solely on a project basis on temporary contracts and worked without a clearly defined status or duties. The authorities informed ECRI that the Ministry of Education will support 20 Roma Mediators/Assistants in the 2017-2018 school year. In this context, ECRI takes positive note of the professional qualification, namely “Associate in the social inclusion for Roma and Egyptians in the field of education”, foreseen in the Roma Strategy⁸⁹ and expects it to accelerate the process of integrating Roma Mediators/Assistants in education system in a sustainable manner.
67. ECRI recommends that the authorities institutionalise and increase the number of Roma Mediators/Assistants at pre-school and primary school level to ensure Roma children’s attendance and decrease the risk of dropping out.
68. Another area of concern regarding the education of Roma children has been the segregation of the Roma pupils in the Konik camp. ECRI notes with satisfaction that the branch of a primary school in Konik was closed down in June 2016 and the Ministry of Education now organises transportation for the pupils from Konik to six different elementary schools in Podgorica. Concerns have been expressed that these pupils are mostly placed in segregated classrooms. However, the ECRI delegation visited the Božidar Vuković Podgoričanin primary school and noted the inclusive education⁹⁰ of Roma pupils with other children.
69. As far as housing is concerned, the situation of Konik camp remains an issue without an ideal solution. In its first report (§ 64), as one of the interim follow-up recommendations, ECRI strongly recommended the Montenegrin authorities to find standard accommodation around the town or the country and close down the camp. Even though the camp⁹¹ is still open, significant progress has been made in constructing social housing under the Strategy for Durable Solutions of Issues regarding Displaced and Internally Displaced Persons in Montenegro (2011-2015) and the Regional Housing Programme.⁹² So far, 48 apartments have been

⁸⁷ EU Commission (2016).

⁸⁸ The “Case management programme” that was run in Podgorica, Nikšić and Berane which envisaged forming teams to monitor children at risk of drop-out also merits mention as good practice.

⁸⁹ This position requires that the Roma mediators/assistants have completed at least three years of secondary education. ECRI has no available information as to the other requirements of this professional qualification.

⁹⁰ In this context, ECRI welcomes the publication of the first Montenegrin-Romani and Romani-Montenegrin dictionary in 2015.

⁹¹ The camp is divided into two areas known as Konik I and Konik II. Konik II has already been closed down.

⁹² Primarily funded by EU IPA (Instrument for Pre-Accession Assistance) 2014-2020 programme.

built in the area of the Konik camp. The construction of another 120 apartments is underway and should be completed by August 2017. Furthermore, due to budget savings, an additional 51 apartments will be constructed for residents of Konik camp and the surroundings, thereby increasing the number of beneficiary families from 120 to 171. These 51 flats are scheduled to be completed in April 2018⁹³, by which time the Konik camp is planned to be closed down. Similar housing programmes have also been developed in Nikšić⁹⁴, Pljevlja, Berane and Herceg Novi.

70. The ECRI delegation was able to witness *in situ* the very poor housing conditions at Konik camp and the incomparable difference in the living conditions of the new apartments. In view of the dedicated efforts, ECRI welcomes the building of apartments providing decent living standards. However, it is highly concerned that this policy creates a new form of urban segregation. ECRI finds it essential to devise sustainable long-term solutions to the problem of Roma housing in a manner that prevents creating ghetto communities and allows mobility between Roma settlements and other parts of the town.
71. ECRI recommends that the authorities adopt an integrated approach to the Roma housing issue going beyond the construction projects; this should include the necessary measures enabling desegregation and facilitating access to employment and education, as well as participation in community activities; and ensuring the involvement of Roma in the decision-making process concerning housing allocation and creation.
72. ECRI notes that although the Law on Social Housing, which was enacted in 2013, recognises Roma as one of its priority target groups, its application is questionable due to the severe lack of financial resources and capacity of local governments which implement local social housing programmes. Although forced evictions are not common, civil society organisations indicated that more than 170 Roma families living in the coastal towns of Budva, Bar, Tivat, Herceg Novi, Ulcinj and Kotor, are at risk of eviction due to the land ownership question between private parties and the local governments or utility companies where Roma are employed, as they have allocated the barracks that Roma live in. ECRI encourages the authorities to solve these issues under the legalisation of Roma settlements/structures foreseen in the Roma Strategy as well as the Law on the Regularisation of Informal Settlements adopted in July 2016.⁹⁵
73. Another negative factor for Roma integration is their limited and unequal access to employment. According to a report published in 2015⁹⁶, 88% of Roma are unemployed (compared to 17,5% of the general population), trading in the informal economy, doing seasonal work or often work as cleaners in public utility companies. Against these limited areas of activity, ECRI positively notes the efforts made by the State Employment Agency to increase the access of Roma to the labour market, through vocational as well as public works programmes, and assistance in registering Roma in active employment policies. ECRI also notes with interest the introduction of subsidies in 2015.⁹⁷ These exempt employers *inter alia* from paying contributions for compulsory social insurance and tax on personal income, but only apply to the employment of Roma people above 50 years and are valid until the end of 2017. Even though no data is

⁹³ Regional Housing Programme (2016).

⁹⁴ According to information provided by the authorities, 62 housing units have been built under the Regional Housing Programme.

⁹⁵ Though the law entered into force on 31 August 2016, its application has been postponed to 31 July 2017.

⁹⁶ CEDEM (2015).

⁹⁷ Decree on subsidies for the employment of certain categories of unemployed persons" ("Official Gazette of Montenegro", no 80/ 15.

available on the number of persons employed under this scheme, ECRI has doubts about the impact of this incentive on the economic empowerment of Roma, given that their life expectancy is 25 years lower than that of the general population⁹⁸ (which is 76 years). ECRI therefore encourages authorities to endorse more competitive incentives attracting a younger work force.

74. ECRI recommends that the authorities adopt subsidies and/or incentives in employment policies with a view to increase the economic empowerment of young Roma.

75. Research suggests that due to the negative perception of Roma and prejudice deeply rooted in society, the reluctance in employing Roma persists, and even Roma holding university degrees are offered only unskilled employment.⁹⁹ ECRI considers that policies should focus on recruiting a proportionate number of Roma as civil servants to ensure an adequate representation of well-educated Roma. The fact that only three Roma persons are employed as civil servants and 13 Roma persons work in 23 municipalities across the country also demonstrates this pressing need. Measures aimed especially at involving Roma at local government level, would help to break the vicious circles in employment of Roma. It would also enhance the trust between the Roma population and the State. In this respect, ECRI regrets to note that the Roma Strategy does not contain any measure for increasing the level of Roma employment in the civil service.

76. ECRI recommends that the authorities give high priority to hiring proportionate number of Roma to the civil service and ensure that they benefit from equally stable working conditions as other civil servants.

- **Refugees and migrants**

77. As regards non-nationals, according to the Ministry of Interior, 17 recognised refugees (the UNHCR figure is eight) and eight persons under subsidiary protection currently reside in Montenegro. Further, most immigrants to Montenegro originate from other countries in the Western Balkans. ECRI is not aware of any integration policy for either of these categories of non-nationals.

II. Topics specific to Montenegro

1. Interim follow-up recommendations of the fourth cycle

78. ECRI, in its first interim follow-up recommendation, encouraged the authorities to strengthen the initial and in-service training provided to police, lawyers, public prosecutors and judges on issues related to equal treatment and non-discrimination, the criminal law provisions in force against racism and racial discrimination and on how to recognise the racist motivation of an offence. In its conclusions adopted on 9 December 2014,¹⁰⁰ ECRI noted with satisfaction that its recommendation had been implemented. However, it refers to its comments and recommendation in §§ 34-35 of this report.

79. In its second interim follow-up recommendation, ECRI strongly recommended the authorities, after full and open consultations with the people concerned, to find standard accommodation all around the town or the country for the Roma, Ashkali and Egyptian inhabitants of Konik, and close down the camp. In its conclusions adopted on 9 December 2014,¹⁰¹ ECRI noted with regret that its recommendation had not been complied. ECRI refers to the section on

⁹⁸ http://www.romadecade.org/cms/upload/file/9810_file1_roma-inclusion-index-2015-s.pdf

⁹⁹ Decade of Roma Inclusion (2005-2015): no. 63.

¹⁰⁰ ECRI (2015).

¹⁰¹ *ibid.*

integration policies for further discussion of this issue (§§ 69-71) and in particular to its recommendation in § 71.

2. Effectiveness of the Protector of Human Rights and Freedoms (Ombudsman)

80. Various interlocutors stated that the Ombudsman's crucial role in tackling discrimination became more visible and praised its constructive dialogue with civil society. ECRI has also observed that the effectiveness of the Ombudsman has significantly improved since its last report.
81. Significant progress has been made in solving the persistent understaffing of the Ombudsman's office. The full staff of 33 persons, which was foreseen in its internal regulation (Rulebook), has been recruited and there are plans to employ more staff in 2017. Recruitment, including the advertising of vacancies and the evaluation of candidates, however, is conducted by the Human Resources Management Authority. ECRI was informed that even if the Ombudsman conducts interviews with candidates, the selection process, particularly the ranking rules under the Law on Civil Servants¹⁰², limits its freedom to appoint its own staff, and is not in line with Principle 5 § 2 of ECRI's GPR No. 2. According to the Law on State Budget for 2017, there are almost no financial resources to conduct research activities with a view to producing and publishing pertinent information for promoting awareness among the general public, as set out in Principle 3 of ECRI's GPR No. 2.
82. Despite the increase in staff, ECRI considers that the number of posts in the departments dealing with human rights and anti-discrimination issues is rather limited. Improving the capacity to handle complaints effectively is particularly important given the growing numbers of cases reported to the Ombudsman. According to its 2015 Annual Report, the Ombudsman received 83 complaints, which is a 34.93% increase compared to 2014. The latest statistics provided by the Ombudsman show that 96 cases were lodged in the first half of 2016. These figures confirm the developing trust in the institution and its positive perception among the public. ECRI was informed that the recommendations of the Ombudsman are almost always followed, although it is not a quasi-judicial body. This demonstrates the importance that is accorded to its decisions, including by public institutions and the authorities. It is therefore necessary to ensure that the Ombudsman has sufficient capacity to fulfill its mandate and particularly to ensure timely and quality follow-up on reported cases of discrimination.¹⁰³
83. ECRI recommends that the authorities further strengthen the capacity of the Ombudsman to carry out its antidiscrimination mandate effectively. This should include, inter alia, freedom to appoint its own staff and sufficient funding to provide for additional human resources and to promote awareness-raising, including conduct of research and field activities.
84. The need to enhance the independence of the Ombudsman has been emphasised by various bodies. In 2011, the joint Venice Commission and OSCE/ODIHR Opinion¹⁰⁴ recommended that the Ombudsman is elected (and dismissed) by a qualified – not simple - majority in Parliament¹⁰⁵, so as to strengthen his/her independence. The same concern was also pointed out by the Council of Europe Commissioner for Human Rights in 2014¹⁰⁶ and the UN in

¹⁰² Especially Article 45.

¹⁰³ EU EC (2016): 64.

¹⁰⁴ Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE/ODIHR, (2011) para.25-26.

¹⁰⁵ Article 92 of the Constitution.

¹⁰⁶ CommDH(2014)13, *op.cit.*, para. 66-67.

2015.¹⁰⁷ ECRI notes that the latest amendments adopted in 2014 regarding the Ombudsman's Office did not contain any provision concerning such elections. ECRI also takes note of the accreditation in 2016 of the Ombudsman to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights under Status B.

85. ECRI recommends that the authorities amend the legislation concerning the election and dismissal of the Ombudsman to further strengthen its independence and to ensure public confidence in the institution.

3. Policies to combat discrimination and intolerance vis-à-vis LGBT¹⁰⁸

- Data

86. There is no official data on the size of the LGBT population in Montenegro. According to the Act on Personal Data Protection, information related to a person's LGBT status is considered personal data which cannot be processed without the person's explicit consent.¹⁰⁹ However, Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. It is clear that without such information there can be no solid basis for developing and implementing policies to address intolerance and discrimination against LGBT persons.
87. ECRI notes that there are some new measures in place to collect and analyse data on discrimination on grounds of sexual orientation and gender identity. In late 2014, the Ministry of Human and Minority Rights adopted a *Rulebook*¹¹⁰ obliging public institutions to keep evidence on discrimination, including these grounds, and send it to the Ombudsman. This information is used to prepare a special section in the annual report of the Ombudsman, which is submitted to the Parliament.¹¹¹ ECRI was informed that despite this obligation, the collection of data remains problematic and the Ombudsman does not always receive the relevant information.
88. On the Rainbow Europe Map 2016 of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), reflecting the European countries' legislation and policies guaranteeing LGBT human rights, Montenegro ranks 20th out of 49 countries.¹¹² While the level of acceptance and general attitude towards LGBT persons in society has improved, discrimination based on sexual orientation, negative discourse, violence and hate speech is still prevalent. In a public opinion poll carried out in 2015, 54% of the LGBT persons surveyed indicated that they had been verbally harassed or abused and 49% had been personally discriminated.¹¹³ The same survey revealed that 47% of participants would try to help their son or daughter find a cure if they found out that their child was homosexual whereas only 8% would accept them unconditionally; 49% would not vote for a party that championed the rights of LGBT people.¹¹⁴

¹⁰⁷ UN GA (2015, A/HRC/30/38/Add.2, para. 59, 86.

¹⁰⁸ For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

¹⁰⁹ Act on Personal Data Protection (Official Gazette of Montenegro 79/ 08 and 70/ 09), Articles 9(7) and 13.

¹¹⁰ Rulebook on contents and manner of keeping records on reported cases of discrimination (2014). The legal basis for this Rulebook is Article 33 of LPD.

¹¹¹ Follow-up to Recommendation CM/Rec (2010)05: 376.

¹¹² <https://rainbow-europe.org/country-ranking>

¹¹³ ILGA Europe 2016: 122.

¹¹⁴ *ibid*: 123.

- **Legislative issues**

89. ECRI welcomes Montenegro's comprehensive non-discrimination legislation which explicitly includes sexual orientation and gender identity among the prohibited grounds (§8) as well as similarly specific provisions in the Criminal Code, particularly Article 42a establishing homo/transphobic motivation as an aggravating circumstance for all criminal offences (§§ 3,6). ECRI notes that the Labour Code¹¹⁵ also prohibits direct and indirect discrimination on the basis of sexual orientation and "other personal characteristics".
90. The Family Code of Montenegro neither provides for same-sex marriage nor registered partnership for same-sex couples.¹¹⁶ ECRI is pleased to note that the "Strategy for improving the quality of life of LGBT persons (2013-2018) (LGBT Strategy)" contains a plan to draft a Law on Registered Partnerships. In 2015, the Working Group composed of all interested NGOs and the Ministry for Human and Minority Rights drafted a proposal¹¹⁷, however, it had not been submitted to the Parliament. ECRI was informed that, in cooperation with the Council of Europe, a new working group will be formed in October 2017 to finalise the draft law. ECRI therefore encourages the authorities to go ahead with their plans and adopt a legislative framework which affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to social reality in which they live.
91. Regarding legal gender recognition, transgender persons who wish to get married or enjoy the rights granted to cohabiting partners are obliged to change the gender marker in official documents.¹¹⁸ In practice, such requests are made to the MoI and the latter makes its final decision on the basis of medical documentation proving the completion of full medical gender reassignment procedures.¹¹⁹ The change of name, on the other hand, is not conditional upon the change of gender marker.¹²⁰ Various NGOs stated that transgender persons who are not willing to go through all gender reassignment procedures, particularly surgery, cannot change their personal documents. ECRI draws the authorities' attention to the international standards in this field and the trend to make these changes possible without imposing measures interfering with transgender persons' right to private and family life, such as gender reassignment surgery.¹²¹
92. ECRI recommends that the relevant legislation is amended to allow gender changes in personal documents, without the requirement for completion of full medical gender reassignment procedures, particularly surgery.
93. Neither the Constitution nor the new Law on International and Temporary Protection of Foreigners (LITPF)¹²² explicitly refer to sexual orientation or gender identity as grounds for granting asylum, however, they are considered in the notion of "membership in a particular social group".¹²³ According to NGO reports,

¹¹⁵ Article 5.

¹¹⁶ Articles 12 and 15 of the Family Code (2007) establish that marriage, as well as cohabiting partnerships, are a "union of a man and a woman".

¹¹⁷ Action Plan of the LGBT Strategy for 2015, a Civil Union Law was drafted (item no. 43).

¹¹⁸ Article 6 and 14 of the Law on Registers of Birth, Marriages and Deaths and Article 22 of the Law on Central Registry of Population.

¹¹⁹ COWI (no date), pp. 17, 26-27.

¹²⁰ According to Article 14 of Law on Personal Name, the change of name is allowed upon the personal request of an adult person, or, in case of a minor, upon the request of the minors' legal representative.

¹²¹ ECtHR 2016: CoE, CM 2010

¹²² Article 3, Official Gazette of Montenegro No. 2/ 17. This law will enter into force on 1 January 2018.

¹²³ Article 23 of LITPF recognises gender identity and sexual orientation as characteristics of a particular social group.

in 2014, the Ministry of Interior granted asylum for the first time to a homosexual man from Iran who fled persecution.¹²⁴

- **Promoting tolerance and combating discrimination**

94. ECRI notes with satisfaction the adoption of the LGBT Strategy in May 2013 and the accompanying action plans¹²⁵, which contain measures to improve the legal and policy framework in several sectors, including education, health care, law enforcement and social acceptance.
95. As regards health, transgender persons have the same access to general health care services as all other individuals. ECRI takes positive note that since 2012 gender reassignment treatment, including psychotherapy, hormone therapy and surgery, is covered under the national health insurance system at the rate of 80%.¹²⁶ In 2014, as part of the LGBT Strategy, contact persons were designated at the Ministry of Health and all public health institutions in order to enhance LGBT persons' access to health care. Moreover, in cooperation with NGOs, a manual on LGBT rights as well as brochures have been disseminated to all public health care institutions and training has been delivered to their staff.
96. As for education, several cases of discrimination based on sexual orientation and gender identity by school authorities were recorded. In April 2014, the Basic Court of Bar ruled for the first time that discrimination based on sexual orientation had taken place in a school.¹²⁷ Research indicates that the integration of human rights education in the school curricula, including non-discrimination on the basis of sexual orientation and gender identity, is relatively low and there is a considerable level of bullying and harassment against LGBT persons in school environments.¹²⁸ In 2015 and 2016, the Ministry of Education conducted some activities to improve the human rights dimension in education and to enhance the democratic culture and diversity in schools. The project on "Scaling up capacities of school psychologist and pedagogues to support discriminated LGBT youth", in partnership with NGOs, has yielded some positive results. ECRI however notes with regret that albeit the LGBT Strategy foresees a wide range of measures in education, their level of implementation, especially as regards training of teachers at primary and secondary education level and adapting the school curricula and textbooks to include LGBT issues¹²⁹, is still not satisfactory.
97. ECRI recommends that the authorities implement in schools at appropriate levels, in the context of the continuing National LGBT Strategy and in consultation with the LGBT community, measures to promote mutual tolerance and respect in education, regardless of sexual orientation or gender identity. In particular, these measures should increase efforts to address bullying of LGBT pupils in schools, with special attention given to teacher training and textbook revisions to raise awareness for LGBT issues.

¹²⁴ ILGA Europe (2015): 119.

¹²⁵ Action Plans for 2013, 2014, 2015 and 2016.

¹²⁶ Montenegrin hospitals do not perform the relevant medical operations. ECRI was informed that such operations are expected to start in 2017.

¹²⁷ The case was lodged following the school management had removed photographs from an exhibition in the premises after a gay artist had publicly declared his sexual orientation. The Court declared the school's action was in violation of the LPD and ordered the return of photographs to the exhibition.

¹²⁸ According to research in 2013 with 1 599 secondary school pupils, 63% of respondents heard of other persons being ridiculed for presumably being members of the LGBT community.

¹²⁹ According to a NGO study, Montenegrin textbooks do not have negative contents regarding sexual orientation or gender identity, but mainly ignore these issues, see A. Saša Zeković (2013): 14.

98. As stated earlier, the first Pride Parades organised in Budva and Podgorica in 2013 were followed by violent attacks (§43). While the consecutive Pride Parades of 2014, 2015 and 2016¹³⁰ were held successfully in Podgorica, the first parade planned in 2015 in Nikšić was banned three times, citing security considerations.¹³¹ Following a complaint lodged by an NGO, the Ombudsman stated that there was a violation of freedom of assembly, as the police, after having banned the pride twice, had enough time to eliminate security risks and to ensure the successful organisation of the parade.¹³²
99. ECRI considers that the promotion of LGBT rights in Montenegro is progressing. However, civil society organisations indicated that the Ministry of Human and Minority Rights which coordinates the Inter-ministerial Working Group¹³³ - the body in charge of supervision and monitoring of the LGBT Strategy- lacks sufficiently experienced staff in this field¹³⁴ and often there are problems with allocating funds for implementing the action plan of the Strategy. In this respect, ECRI notes with regret that the Inter-ministerial Working Group does not include any representatives from LGBT NGOs in contrast to the former inter-ministerial body, the Council for Protection against Discrimination, that was dissolved in early 2016. In addition, while welcoming the Memorandum of Understanding (MoU) signed with 14 out of 23 municipalities on the promotion of tolerance towards LGBT people, ECRI notes that the situation of LGBT persons appears to be particularly difficult at local level. It is therefore necessary to include more targeted measures with a regional dimension in the LGBT action plan.
100. ECRI recommends that the Inter-ministerial Working Group ensures speedy implementation of all the projects of the Action Plan of the Strategy for improving the quality of life of LGBT persons (2013-2018) in close and regular cooperation with LGBT NGOs. This should be properly funded and include targeted measures at local level.

¹³⁰ Pride Parade in 2016 was postponed to 17 December 2016 due to elections on 16 October 2016.

¹³¹ Balkan Insight (2015b); EP Intergroup 2015. The Nikšić Pride was neither held in 2016.

¹³² The Ombudsman Decision no. 425/ 12, 24.12.2015.

¹³³ The Working Group includes representatives of the Ministry of Human and Minority Rights, the Ministry of Education, the Ministry of Health, the Ministry of Culture, the Ministry of Sustainable Development and Tourism, the Ministry of Foreign Affairs, the Ministry of Labour and Social Welfare, the Ministry of Sports and the Police Directorate of the Ministry of Internal Affairs.

¹³⁴ On a similar note, see EU EC 2016: 65.

INTERIM FOLLOW-UP RECOMMENDATIONS

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

- ECRI recommends that the authorities put in place a system for collecting disaggregated data in order to provide a coherent, integrated view of the cases, by recording the specific bias motivation of racist and homo/transphobic hate crime (hate speech and violence) reported to the police as well as the follow-up given by the justice system, and that this data is made available to the public.
- ECRI recommends that the authorities institutionalises and increases the number of Roma Mediators/Assistants at the pre-school and primary school level to ensure children's attendance and decrease the risk of dropping out.

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

LIST OF RECOMMENDATIONS

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

1. (§7) ECRI recommends that the authorities bring the Criminal Code into line with its General Policy Recommendation (GPR) No. 7 as indicated in the preceding paragraphs; in particular they should (i) include in all criminal law provisions aimed at combating racism and intolerance the grounds of language and citizenship, as well as sexual orientation and gender identity, (ii) criminalise racist insults against a person or a group of persons, irrespective of their domicile, and (iii) criminalise the public dissemination or distribution, or the production or storage aimed at public dissemination or distribution, with a racist aim, of written, pictorial or other material containing racist manifestations.
2. (§12) ECRI recommends that the authorities amend the anti-discrimination legislation to remedy the gaps identified above in line with its General Policy Recommendation (GPR) No. 7, in particular, they should i) include discrimination by association, ii) introduce a legal provision placing public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions, iii) include the express duty to ensure that those parties to whom public authorities award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination, and iv) provide for the obligation to suppress public financing of organisations or political parties which promote racism.
3. (§16) ECRI recommends that the authorities put in place a system for collecting disaggregated data in order to provide a coherent, integrated view of the cases, by recording the specific bias motivation of racist and homo/transphobic hate crime (hate speech and violence) reported to the police as well as the follow-up given by the justice system, and that this data is made available to the public.
4. (§31) ECRI recommends that, without interfering with the independence of the media, the authorities encourage the latter to ensure better compliance with ethical standards as well as provide training to this effect. ECRI also recommends that the authorities initiate an awareness-raising campaign jointly with the media self-regulatory bodies on preventing and combating hate speech.
5. (§33) ECRI recommends intensifying the work of the cybercrime unit and providing it with appropriate technical and human resources, as well as training, to combat hate speech on the Internet.
6. (§35) ECRI recommends that the training activities for law enforcement officials and the judiciary on hate crime are scaled up. Such training should cover homo/transphobic hate crime. ECRI also recommends that the authorities carry out an impact assessment to evaluate the training to establish to what extent it helps hate crime to be identified effectively, and, if necessary, adjust it.
7. (§37) ECRI recommends that the authorities discuss with the leadership of the Serbian Orthodox Church ways in which the Church could use its moral standing to prevent and combat hate speech, including against LGBT persons, and ensure that their representatives refrain from making derogatory comments.
8. (§49) ECRI recommends that the question of a racist and/or homo-/transphobic motivation in cases of violent incidents is made an integral part of investigations, particularly through providing clear instructions to police, as well as judicial proceedings from their very beginning. ECRI also recommends that the authorities offer training to judges and prosecutors on the application of Article 42a of the Criminal Code on racist and homo/transphobic motivation as an aggravating circumstance.
9. (§56) ECRI recommends that the authorities, in cooperation with civil society, conduct a thorough evaluation of the implementation of the Roma Strategy (2016-2020) on an annual basis in order to measure its impact and redefine its

parameters and goals where necessary. In this context, they should strengthen the collection of equality data on Roma, in particular in the fields of education, employment, housing and health, while ensuring respect for the principles of confidentiality, voluntary self-identification and informed consent, as set out in paragraph 14 of its General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma.

10. (§58) ECR recommends that the authorities set up a robust monitoring procedure for the implementation of the Roma Strategy and ensure its long-term sustainability by clearly allocating appropriate funds.
11. (§62) ECRI recommends amending the Law on Free Legal Aid to enable Roma at risk of statelessness to benefit from it during the late birth registration procedure.
12. (§67) ECRI recommends that the authorities institutionalise and increase the number of Roma Mediators/Assistants at pre-school and primary school level to ensure Roma children's attendance and decrease the risk of dropping out.
13. (§71) ECRI recommends that the authorities adopt an integrated approach to the Roma housing issue going beyond the construction projects; this should include the necessary measures enabling desegregation and facilitating access to employment and education, as well as participation in community activities; and ensuring the involvement of Roma in the decision-making process concerning housing allocation and creation.
14. (§74) ECRI recommends that the authorities adopt subsidies and/or incentives in employment policies with a view to increase the economic empowerment of young Roma.
15. (§76) ECRI recommends that the authorities give high priority to hiring proportionate number of Roma to the civil service and ensure that they benefit from equally stable working conditions as other civil servants.
16. (§83) ECRI recommends that the authorities further strengthen the capacity of the Ombudsman to carry out its antidiscrimination mandate effectively. This should include, inter alia, freedom to appoint its own staff and sufficient funding to provide for additional human resources and to promote awareness-raising, including conduct of research and field activities.
17. (§85) ECRI recommends that the authorities amend the legislation concerning the election and dismissal of the Ombudsman to further strengthen its independence and to ensure public confidence in the institution.
18. (§92) ECRI recommends that the relevant legislation is amended to allow gender changes in personal documents, without the requirement for completion of full medical gender reassignment procedures, particularly surgery.
19. (§97) ECRI recommends that the authorities implement in schools at appropriate levels, in the context of the continuing National LGBT Strategy and in consultation with the LGBT community, measures to promote mutual tolerance and respect in education, regardless of sexual orientation or gender identity. In particular, these measures should increase efforts to address bullying of LGBT pupils in schools, with special attention given to teacher training and textbook revisions to raise awareness for LGBT issues.
20. (§100) ECRI recommends that the Inter-ministerial Working Group ensures speedy implementation of all the projects of the Action Plan of the Strategy for improving the quality of life of LGBT persons (2013-2018) in close and regular cooperation with LGBT NGOs. This should be properly funded and include targeted measures at local level.

BIBLIOGRAPHY

This bibliography lists the main published sources used during the examination of the situation in Montenegro. It should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

European Commission against Racism and Intolerance (ECRI)

1. ECRI (2015), Conclusions on the implementation of the recommendations in respect of Montenegro subject to interim follow-up, CRI(2015)7.
2. ECRI (2012a), Report on Montenegro, CRI (2012)5.
3. ECRI (1996), General Policy Recommendation No. 1: Combating racism, xenophobia, antisemitism and intolerance, CRI(96)43.
4. ECRI (1997), General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, CRI(97)36.
5. ECRI (1998a), General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies, CRI(98)29.
6. ECRI (1998b), General Policy Recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, CRI(98)30.
7. ECRI (2000), General Policy Recommendation No. 5: Combating intolerance and discrimination against Muslims, CRI(2000)21.
8. ECRI (2001), General Policy Recommendation No. 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, CRI(2001)1.
9. ECRI (2003), General Policy Recommendation No. 7: National legislation to combat racism and racial discrimination, CRI(2003)8.
10. ECRI (2004a), General Policy Recommendation No.8: Combating racism while fighting terrorism, CRI(2004)26.
11. ECRI (2004b), General Policy Recommendation No.9: The fight against antisemitism, CRI(2004)37.
12. ECRI (2007a), General Policy Recommendation No.10: Combating racism and racial discrimination in and through school education, CRI(2007)6.
13. ECRI (2007b), General Policy Recommendation No.11: Combating racism and racial discrimination in policing, CRI(2007)39.
14. ECRI (2009), General Policy Recommendation No. 12: Combating racism and racial discrimination in the field of sport, CRI(2009)5.
15. ECRI (2011), General Policy Recommendation No.13: Combating anti-Gypsyism and discrimination against Roma, CRI(2011)37.
16. ECRI (2012b), General Policy Recommendation No.14: Combating racism and racial discrimination in employment, 2012, CRI(2012)48.
17. ECRI (2016a), General Policy Recommendation No. 15: Combating Hate Speech, CRI(2016)15.
18. ECRI (2016b), General Policy Recommendation No. 16: Safeguarding irregularly present migrants from discrimination, CRI(2016)16.

Other sources

19. AlJazeera English (2013, October 20), Montenegro's gay pride march sparks violence, <http://www.aljazeera.com/news/europe/2013/10/montenegro-gay-pride-march-sparks-violence-20131020132010789429.html>
20. Amnesty International (2014), Montenegro: Submission to the United Nations Human Rights Committee, 112th Session.
21. Balkan Insight (2014a, October 27). Gay Montenegrins Face Workplace Discrimination, <http://www.balkaninsight.com/en/article/montenegro-s-gay-persons-face-discrimination-in-workplace>.

22. Balkan Insight (2014b, December 3), Montenegro Prosecution Charges Tabloid With Hate Speech, <http://www.balkaninsight.com/en/article/montenegro-s-prosecution-sues-informer-for-hate-speech>.
23. Balkan Insight (2015a, March 26), Montenegro Fines 'Informer' Editor For Hate Speech, <http://www.balkaninsight.com/en/article/montenegro-court-convicts-tabloid-editor-of-hate-speech>.
24. Balkan Insight, (2015b, April 13), Montenegro Faces Hard Choices Over Sports Violence, <http://www.balkaninsight.com/en/article/montenegro-faces-hard-choices-over-sports-violence>.
25. Balkan Insight (2015c, May 7), Gay Anger in Montenegro over Banned March, <http://www.balkaninsight.com/en/article/montenegrin-rights-groups-protest-over-new-gay-march-ban>.
26. Balkan Insight (2015d, May 29), Montenegro Jails Three for Abusing Gay Activist, <http://www.balkaninsight.com/en/article/montenegro-jails-three-for-gay-activist-assault>.
27. Balkan Insight (2016, April 25), New Media Ethics Code Welcomed in Montenegro, <http://www.balkaninsight.com/en/article/montenegrin-media-approve-new-code-of-ethics-04-22-2016>.
28. Centre for Democracy and Human Rights (CEDEM) (2015) Employment of male and female members of Roma community in Montenegro - Legislation, employers' views, good practice.
29. Council of Europe (CoE), Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) (2014), Second Opinion on Montenegro, ACFC/OP/II (2013)002.
30. CoE, Commissioner for Human Rights (2011), Discrimination on grounds of sexual orientation and gender identity in Europe, 2nd edition.
31. CoE, Commissioner for Human Rights (2014), Report by Nils Muižnieks following his visit to Montenegro from 17 to 20 March 2014, CommDH(2014)13.
32. CoE, Committee of Ministers (2010), Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity.
33. CoE, Directorate General of Human Rights and Rule of Law (2013), Opinion of the Directorate General of Human Rights and Rule of Law Human Rights Policy and Development Department on the draft Law on the amendments of the Law on Protector of Human Rights and Freedoms of Montenegro.
34. CoE, Parliamentary Assembly (PACE) (2015), The honouring of obligations and commitments by Montenegro.
35. CoE, Steering Committee for Human Rights (CDDH) (2013), Follow-up to the Committee of Ministers' Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity, CDDH(2013)004FIN.
36. CoE, Venice Commission and the Organization for Security and Co-operation in Europe (OSCE) - Office for Democratic Institutions and Human Rights (ODIHR) (2011), Joint opinion on the law on the protector of human rights and freedoms of Montenegro by the Venice Commission and the OSCE/ODIHR, CDL-AD(2011)034, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)034-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)034-e).
37. COWI/The Danish Human Rights Institute (2011), Gorjanc Prelevic, T., Study on Homophobia, Transphobia and Discrimination on grounds of Sexual orientation and Gender Identity, Legal Report: Montenegro, http://www.coe.int/t/Commissioner/Source/LGBT/MontenegroLegal_E.pdf
38. European Court of Human Rights (ECtHR) (2016), Fact sheet - Gender identity issues, http://www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf
39. Decade of Roma Inclusion Secretariat Foundation (2014), Civil Society Monitoring on the Implementation of the National Roma Integration Strategy and Decade Action Plan in Montenegro in 2012 and 2013.
40. European Union (EU), European Commission (EC) (2014), Montenegro Progress Report, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf.

41. EU, EC (2016), Montenegro 2016 Report, SWD(2016)360 final, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_montenegro.pdf.
42. EU, EC (2016, 27 June), Assessing the implementation of the EU Framework for National Roma Integration Strategies and the Council Recommendation on effective Roma Integration measures in Member States.
43. European network of legal experts in gender equality and non-discrimination (European Equality Law Network-EELN) (2015), Country report on Non-discrimination, Montenegro, 2015.
44. European network of legal experts in gender equality and non-discrimination (European Equality Law Network-EELN) (2016), Country report on Non-discrimination, Montenegro, 2016.
45. European Parliament (2016), Resolution of 10 March 2016 on the 2015 report on Montenegro, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0092+0+DOC+XML+V0//EN&language=EN>.
46. Government of Montenegro (2012, November 7), Council for Protection against Discrimination strongly condemns hate speech, violence against LGBT advocates, <http://www.gov.me/en/news/117570/Council-for-Protection-against-Discrimination-strongly-condemns.html>.
47. Government of Montenegro (2013, July 23), Government of Montenegro strongly condemns hate speech against LGBT population and other vulnerable groups, <http://www.gov.me/en/news/129997/Government-of-Montenegro-strongly-condemns-hate-speech-against-LGBT-population-and-other-vulnerable-groups.html>.
48. Government of Montenegro, (2015a), UPR, Mid-Term report of Montenegro on the implementation of recommendations received during the second cycle of Universal Periodic Review, <http://lib.ohchr.org/HRBodies/UPR/Documents/Session15/ME/Montenegro2ndCycle.pdf>.
49. Government of Montenegro (2015b), Report on the implementation of the Strategy for improving the position of Roma and Egyptians in Montenegro 2012-2016 for 2014.
50. Government of Montenegro, Ministry for Human and Minority Rights (2014, November 28), The Rulebook on the content and manner of keeping separate records on cases of reported discrimination <http://www.mmp.gov.me/biblioteka/pravilnici>.
51. International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)-Europe (2014), Annual Review, http://www.ilga-europe.org/sites/default/files/Attachments/annual_review_2014_web_version.pdf.
52. ILGA Europe (2015), Annual Review, http://www.ilga-europe.org/sites/default/files/Attachments/01_full_annual_review_updated.pdf.
53. ILGA Europe (2016), Annual Review, http://www.ilga-europe.org/sites/default/files/2016/full_annual_review.pdf.
54. Laković, M. et Saša Zeković, A. (2015), Strategic Litigation on sexual orientation discrimination in Montenegro: from principles to practice.
55. Le Courrier des Balkans (2015, April 6), Après les violences du match contre la Russie, le chef des ultras du Monténégro s'explique, <http://balkans.courriers.info/article26951.html>.
56. Montenegro Media Institute (2013), Online Hate Speech, Montenegro country report, EU-UNESCO Project: Media Accountability in South-East Europe.
57. National Democratic Institute (NDI), Public Opinion Poll in the Balkans on LGBTI Communities (2015), available at <http://fr.slideshare.net/NDIdemocracy/ndi-public-opinion-poll-in-the-balkans-on-lgbti-communities>.
58. OSCE-ODIHR, Hate Crime Reporting: Montenegro, available at: <http://hatecrime.osce.org/montenegro>.
59. OSCE (2012), Montenegro Early Parliamentary Elections 14 October 2012, Final Report, <http://www.osce.org/odihr/97940?download=true>.
60. OSCE (2013, November 29), ODIHR trains Montenegrin police in recognizing and investigating hate crimes <http://www.osce.org/odihr/109084>.
61. OSCE (2017), Montenegro Parliamentary Elections 2016, Final Report, <http://www.osce.org/odihr/elections/montenegro/295511?download=true>.

62. Rakočević, K. et al. (2016), The acceptance of LGBT people in Montenegro: Barriers, Challenges and Experiences, LGBT Forum Progress.
63. Roma Times (2016, May 20), The thugs who beat up the minor Roma boy in Podgorica are arrested, <http://romatimes.news/index.php/en-us/nevipena/121-nevipe/974-the-thugs-who-beat-up-the-minor-roma-boy-in-podgorica-are-arrested>.
64. Sarajevo Open Centre (2015), The Effect of EU Integration Process on Human Rights of LGBT People in Slovenia, Croatia and Montenegro, http://soc.ba/site/wp-content/uploads/2015/05/EU-integracije_eng_web.pdf.
65. Saša Zeković, A. (2013), Montenegrin educational policy and sexual orientation: representation of LGBT topics in school curricula and textbooks, Centre for Civic Education/LGBT Forum Progress, <http://media.lgbtprogres.me/2011/03/LGBT-analyses-ENG-11.pdf>.
66. Saša Zeković, A. et al (2014), Myths and Stereotypes: Violence and Hate Speech towards LGBT Persons, available at <http://media.lgbtprogres.me/2014/05/Myths-and-stereotypes-eng.pdf>.
67. Saveljic, M. et al. (2016), Legal protection of LGBT Persons: Role and Actions of the Prosecutor's Office, Podgorica, <http://media.lgbtprogres.me/2016/09/legal-protection-web.pd>.
68. Statistical Office of Montenegro (MONSTAT) and UNICEF (2014), 2013 Montenegro Multiple Indicator Cluster Survey and 2013 Montenegro Roma Settlements Multiple Indicator Cluster Survey, Final Report.
69. The European Parliament's Intergroup on LGBTI Rights (2015, September 18), Montenegrin Police bans Nikšić Pride for third time this year, <http://www.lgbt-ep.eu/press-releases/montenegrin-police-bans-niksic-pride-for-third-time-this-year/>.
70. The Protector of Human Rights and Freedoms of Montenegro (Ombudsman) (2014), Annual Report.
71. The Protector of Human Rights and Freedoms of Montenegro (Ombudsman) (2015), Annual Report.
72. United Nations (UN), Committee on the Elimination of Discrimination against Women (CEDAW) Concluding Observations on Montenegro (2011), CEDAW/C/MNE/CO/1.
73. UN, Committee on the Elimination of Racial Discrimination (CERD) (2014), Concluding Observations on Montenegro, CERD/C/MNE/CO/2-3.
74. UN, Human Rights Committee (HRC) (2014), Concluding Observations on Montenegro, CCPR/C/MNE/CO/1.
75. UN, Human Rights Council (2015), Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Montenegro, A/HRC/30/38/Add.2.
76. UN, Human Rights Council (2014), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Mission to Montenegro, A/HRC/26/20/Add.1.
77. UNHCR (2016), Representation in Montenegro, Montenegro Factsheet.
78. UNICEF (2014), Study on investing in early childhood education in Montenegro.
79. U.S. Department of State, Bureau of Diplomatic Security (OSAC) (2016), Montenegro 2016 Crime and Safety Report.
80. US Department of State, Bureau of Democracy, Human Rights and Labour (2016), International Religious Freedom Report – Montenegro, <https://2009-2017.state.gov/documents/organization/238626.pdf>.
81. US Department of State, Bureau of Democracy, Human Rights and Labour (2016), Montenegro 2015 Human Rights Report, <http://www.state.gov/documents/organization/253093.pdf>.

