

**European Commission  
against Racism and Intolerance**

**Third report on  
Romania**

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## **Foreword**

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

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4-5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

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

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

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 24 June 2005 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**

### ***Executive summary***

Since the publication of ECRI's second report on Romania on 23 April 2002, progress has been made in a number of fields. Romania has made a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Romanian authorities have adopted an anti-discrimination law and set up the National Council Against Discrimination, which is the body responsible for applying this law. Moreover, the Romanian Criminal Code has been amended to include, among others, provisions against racial hatred. Under the Strategy for Improving the Situation of the Roma, the authorities have set up programmes designed to place members of the Roma community on an equal footing with the rest of the population. They have also provided members of the judiciary and the police with training courses on discrimination issues.

However, a number of recommendations made in ECRI's second report have not been implemented or have only been partially implemented. As regards the reception of asylum seekers and refugees, ECRI notes that the programmes intended for them receive virtually no government funding, which makes it difficult to integrate these people into Romanian society. The anti-discrimination legislation has hardly been applied at all and neither public officials nor the general public are aware of said legislation or of the existence of the National Council Against Discrimination. The electoral law subjects minority organisations which are not already represented in Parliament to eligibility requirements for local elections which are unacceptable in a democratic society. Moreover, the Roma community continues to be discriminated against in all areas, including the labour market and access to education, public places and decent housing. Furthermore, at local level, the media continue to publish derogatory articles on minorities, especially on the Roma, in complete impunity, without incurring the appropriate penalties.

In this report, ECRI recommends that the Romanian authorities take further action in a number of areas. They should, notably, take steps to fully apply the anti-discrimination legislation and provide the National Council Against Discrimination with sufficient resources to perform its tasks. ECRI also asks the Romanian authorities to apply the Criminal Code provisions on racial hatred and intolerance. They should also pursue and strengthen their efforts to train judges, prosecutors, lawyers and members of law enforcement agencies and border police in combating discrimination. ECRI considers it vital that the Strategy for Improving the Situation of the Roma should be fully applied at all levels and in co-operation with NGOs and civil society so that the Roma cease to be victims of major discrimination in Romanian society. It insists on the need for a swift solution to the problem of Roma who have no identity papers.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON ROMANIA

### International legal instruments

1. In its second report, ECRI recommended that Romania ratify Protocol No.12 to the European Convention on Human Rights and make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination by which states accept the competence of the Committee on the Elimination of Racial Discrimination to receive individual complaints. ECRI also recommended that Romania ratify the European Charter for Regional or Minority Languages and the European Convention on Nationality, as well as the European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at Local Level.
2. ECRI notes with satisfaction that Romania has made a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and that this declaration came into force on 21 March 2003 with the adoption of Law No. 612/13 in November 2002. ECRI also welcomes Romania's ratification of the European Convention on Nationality on 20 January 2005. It likewise notes with satisfaction that on 9 October 2003 Romania signed the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, and that it is examining this convention with a view to ratifying it. ECRI also notes that although it has not yet ratified the European Charter for Regional or Minority Languages, Romania has stated that it is finalising the draft law on the subject, which it intends to adopt in the autumn.
3. Although Romania has not yet ratified Protocol No.12 to the European Convention on Human Rights, the authorities have informed ECRI that the draft law for its ratification is being examined by the relevant Ministries. The European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at Local Level have not been ratified. Romania has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families either.

### ***Recommendations:***

4. ECRI recommends that Romania ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
5. ECRI again recommends that Romania ratify Protocol No.12 to the European Convention on Human Rights, the European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at Local Level. It likewise recommends that Romania ratify the European Charter for Regional or Minority Languages.
6. Lastly, ECRI recommends that Romania ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

### Constitutional provisions and other basic provisions

7. Since the publication of ECRI's second report on Romania, the Romanian Constitution was revised in 2003 following a national referendum held on 18 and

19 October 2003.<sup>1</sup> The new paragraph 4 of Article 44 of the Constitution prohibits the expropriation of property on the grounds of membership of an ethnic or religious group or on any other discriminatory grounds. Moreover, Article 127 entitles national minorities to use their own language before the courts. Article 49 provides for a restriction on the exercise of certain fundamental rights and freedoms in order to protect citizens' rights and freedoms, among other things, specifying that this restriction must not be applied in a discriminatory manner.<sup>2</sup> However, the new Constitution does not provide, as ECRI recommends in paragraph 3 of its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination, that the exercise of freedom of expression, assembly and association may be restricted, in full conformity with the European Convention on Human Rights, with a view to better combating racism, it being understood that such an approach should fully respect the European Convention on Human Rights.

### ***Recommendations:***

8. ECRI recommends that the Romanian authorities include in the Constitution a provision providing for the restriction of freedom of expression, assembly and association with a view to combating racism, on the basis of the arrangements provided for in its General Policy Recommendation No. 7.

#### ***- Legislation on political parties and other organisations***

9. In its second report, ECRI asked the Romanian authorities to give consideration to the fact that some political parties made statements likely to stir up ill-feeling against certain minority groups in the population. It therefore asked them to take steps, including the effective implementation of the legislation in force, to combat such forms of incitement to hatred.

10. Emergency Order No. 31/2002 prohibiting fascist, racist or xenophobic organisations and symbols and prohibiting promotion of the cult of persons guilty of crimes against peace and humanity was published in the Official Journal, No.214, on 28 March 2002. Among other things, this order prohibits incitement to racial hatred, the sale and dissemination of "fascist, racist or xenophobic symbols", the "promotion of the cult of persons guilty of a crime against peace or humanity and promotion of the fascist ideology" and "public questioning or negation of the Holocaust or of its effects". However, despite the adoption of this order, ECRI notes that there is a fascist organisation in Romania which is still carrying out its activities with complete impunity<sup>3</sup>. This organisation, which is not officially registered, publishes a journal<sup>4</sup> in which, among other things, it has proposed a "solution for minorities" in Romania aimed at the Roma, the Jews and the Hungarian minority. In February 2005, an NGO drew the Romanian authorities' attention to this organisation's publications. The authorities in turn forwarded the publications to another NGO, which confirmed that they were illegal. ECRI notes that the authorities decided to take action only after receiving

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<sup>1</sup> The Constitution was published in the Official Journal, No.767, on 31 October 2003.

<sup>2</sup> Article 49 of the Constitution provides that: "1. The exercise of certain rights or freedoms may be restricted only by law and only if it is necessary, as the case may be, in order to: protect national security, public order, health or morals and citizens' rights and freedoms; ensure the conduct of a criminal investigation; prevent the consequences of a natural disaster or other extremely serious disaster. 2. The restriction may be decided only if it is necessary in a democratic society. The measure shall be proportionate to the situation that gave rise to it, shall be applied in a non-discriminatory manner and may not jeopardise the existence of the right or freedom concerned".

<sup>3</sup> The Legionaries.

<sup>4</sup> "Legionary Word".

this confirmation. Although the organisation is not widely known, it puts up posters in Bucharest, especially on the Bucharest University campuses, to recruit new members. ECRI deplors the fact that the sanctions provided for by Emergency Order No. 31/2002, ranging from deprivation of certain rights to imprisonment, have not as yet been applied to this organisation in order to prohibit its activities and/or punish those of its members who make racist statements or statements likely to stir up racial hatred. ECRI also notes that when NGOs lodge complaints against other fascist organisations, no action is apparently taken on their complaints or the prosecuting authorities reply that they are unable to identify the persons concerned, although their addresses and telephone numbers are available on the Internet. ECRI therefore notes that the authorities appear to lack the necessary will to apply this order to the cases that it covers.

11. ECRI also notes that while, as stated above, the emergency order prohibits “promotion of the cult of persons guilty of a crime against peace or humanity and promotion of the fascist ideology”, streets in some towns, including Cluj, still bear the name of General Antonescu, who was responsible for the deaths of hundreds of thousands of Jews, Roma<sup>5</sup> and other “non-Aryan” minorities during the Second World War. A number of NGOs have applied to the authorities to change these street names, to no avail.

#### ***Recommendations:***

12. ECRI recommends that the Romanian authorities apply Emergency Order No. 31/2002 more forcefully to any organisations or political parties advocating racist ideologies.

#### ***- Legislation on religious denominations***

13. In its second report, ECRI considered that Romania should examine more closely and in a fully objective fashion the possibility or otherwise for certain religious associations currently recognised as such and enjoying certain benefits, including financial support from the state and tax relief, to register as religious cults.
14. If a religious community is to be recognised as a cult or a religion<sup>6</sup>, it must submit a series of documents on its statutes, internal organisation and doctrine. All religious communities enjoying the status of religious cult receive some operational benefits including financial support from the state commensurate with the number of members, tax relief and the right to teach their religion in state schools. However, Romanian NGOs deplore the fact that government grants to recognised religious associations are allocated in an arbitrary fashion. ECRI also notes that since its second report on Romania, only one religious association has been granted the status of religious cult<sup>7</sup>.
15. ECRI notes with concern reports that although it does not have the status of a state religion, the Orthodox Church, which is the majority religion in Romania, holds a dominant position in Romanian society. The other religions thus consider

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<sup>5</sup> For further information on antisemitism and the situation of the Roma in Romania, see the parts of the report entitled “Antisemitism” and “Specific issues” respectively.

<sup>6</sup> To date the following religious denominations have been recognized by the Romanian state: 1. the Romanian Orthodox Church (Serbian Orthodox Vicariate, Ukrainian Orthodox Vicariate); 2. the Catholic Church (Roman Catholic Church, Greek Catholic Church); 3. the Protestant Churches (Reformed Church, Evangelical Church, Lutheran Evangelical Church); 4. the Armenian Church; 5. Evangelical cults; 6. Islam; and 7. the Mosaic cult.

<sup>7</sup> Following a decision rendered by the Bucharest Court of First Instance on 9 April 1990, the Ministry of Culture and Cults granted the status of religious cult to Jehovah’s Witnesses by Order No. 2657 of 22 May 2003.

that the Orthodox Church has too much influence on the authorities' policies. It also appears to receive benefits that the other religions do not have, such as chapels in prisons and detention centres. This Church is also said to exert a lot of influence over government decisions on matters such as the award of status as a religious cult to religious associations. ECRI also notes that given the number and diversity of officially recognised and practised cults in Romania, the inter-religious dialogue between the Orthodox Church and other religious denominations could be improved. In particular, the dialogue between this Church and the Greek Catholic Church is apparently at a low ebb, mainly on account of the manner in which the authorities handle the issue of the restitution of property confiscated during the communist period.<sup>8</sup>

16. ECRI also notes with concern reports that members of the Orthodox Church were engaging in all manner of harassment against followers of the Greek Catholic Church with a certain degree of complacency from the authorities<sup>9</sup>. ECRI has also been informed that although religious education is not compulsory in Romania, there are cases in some state schools where pupils receive religious instruction against their parents' will.

#### ***Recommendations:***

17. ECRI recommends that the Romanian authorities safeguard the principle of equality between all religious denominations in accordance with the Constitution. It recommends in this regard that they send a clear signal to that effect by enforcing compliance with the principle of the separation of the Church and the State, which is provided for in the Constitution, at all levels and in all areas.
18. ECRI also recommends that the Romanian authorities apply the provisions governing religious cults and religious associations in a transparent and equitable manner. It recommends on this matter that they ensure that the decision on whether or not to award the status of religious cult to a religious association is taken in the light of all the relevant factors and without interference by any third party whatsoever.
19. ECRI recommends that the Romanian authorities initiate an equitable dialogue between the Orthodox Church and religious minorities so as to encourage mutual respect and the peaceful settlement of the differences and disputes that sometimes arise between them. It therefore recommends that they introduce mediation arrangements, hold interreligious colloquies and seminars and conduct information campaigns to promote the idea of a multid denominational society.
20. In its second report, ECRI encouraged the Romanian authorities to ensure that the revised draft law on religion takes full account of the opinions expressed by the bodies consulted.
21. The Romanian authorities have said that no new law on religious cults has been adopted since ECRI's second report on Romania. Therefore, Decree No. 177/1948 continues to govern the legal status of religions. However, a draft law establishing the general framework for the exercise of religious freedom is being drawn up. As the process for consideration of the draft law on religious cults has already lasted several years and no law has yet been adopted, ECRI welcomes the Romanian authorities' assurances that this law should be adopted in the course of this year.

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<sup>8</sup> For further information on the restitution of property, see the part of the report entitled "Regulations concerning restitution of confiscated or expropriated property".

<sup>9</sup> See, Civil and Political Rights, Including the Question of Religious Intolerance, Report by the UN Special Rapporteur on freedom of religion or belief, E/CN.4/2004/63/Add.2, 16 December 2003.



### **Recommendations:**

22. ECRI recommends that the Romanian authorities adopt the law on religious cults without delay. It recommends in this regard that they ensure full consultation of all religions and religious associations on the subject.

#### **- Draft law on the status of national minorities**

23. A draft law on the status of national minorities is currently before the Romanian Parliament. This draft, which was drawn up in 1995 and has since been amended several times, contains in its Article 3 a definition of Romanian national minorities. These are defined as communities which have lived in Romania for at least a century, have their own national, ethnic, cultural, linguistic and religious identity and wish to preserve, express and promote that identity<sup>10</sup>. This draft law includes a chapter on cultural autonomy which provides for national minorities' right to have their own institutions in areas such as culture, education and the media. Moreover, this chapter defines the manner in which these institutions are to function and be monitored and provides for the right to education in minority languages, the political representation of national minorities and their closer involvement in the decision-making process. The draft law enshrines the principle of non-discrimination, prohibiting all forms of discrimination and incitement to discrimination.
24. However, ECRI notes with concern that the chapter of this draft law relating to national minority organisations makes all new organisations wishing to represent minorities subject to the same requirements as those provided for in Law No. 67/2004 on Local Elections<sup>11</sup>. This chapter thus contains a series of conditions which are virtually impossible for these organisations to meet. It also maintains the status quo by providing that all national minority organisations which are already members of the Council for National Minorities and are represented in Parliament will preserve their legal status and have the rights and powers provided for in the draft law on the status of national minorities. Since, as indicated below<sup>12</sup>, one effect of these conditions is that they infringe the right of national minorities to choose their representatives, ECRI considers that they put national minorities at a disadvantage in relation to the majority, which is free to choose its political leaders at all levels.

### **Recommendations:**

25. ECRI recommends that the Romanian authorities adopt the draft law on the status of national minorities without delay. It urges them to scrap or amend any provisions of this law which might infringe the right of national minorities to choose their political representatives at local level.

### **Criminal law provisions**

26. In its second report, ECRI urged the Romanian authorities to give a high priority to the issue of the implementation of criminal law provisions against racism.
27. Since the publication of ECRI's second report, Romania has adopted a new Criminal Code containing provisions on racist behaviour. Article 248 of the Code prohibits "the setting up of a fascist, racist or xenophobic organisation" as well as

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<sup>10</sup> Article 3 2) of this draft law lists Romanian national minorities as follows: Albanians, Armenians, Bulgarians, Czechs, Croats, Greeks, Jews, Germans, Italians, Macedonians, Hungarians, Poles, Lipovan Russians, Roma, Ruthenians, Serbs, Slovaks, Tartars, Turks and Ukrainians.

<sup>11</sup> For a more detailed discussion of this law, see below the section of the report entitled "Electoral law".

<sup>12</sup> *Ibid.*

“any form of support for and membership” of this type of organisation. Article 357 further prohibits “manifestations of racism or chauvinistic nationalism”, while Article 358 prohibits “chauvinistic nationalist propaganda” and incitement to racial hatred. Article 171 i) of the Criminal Code prohibits all forms of discrimination on, among other grounds, race, nationality, ethnic origin, culture or religion. The Romanian authorities have informed ECRI that a new Criminal Code and Code of Criminal Procedure will be adopted in July 2005. However, ECRI notes that for the time being, the existing provisions governing racist or xenophobic acts are still all too rarely applied. The Romanian authorities themselves have acknowledged that the police tend to punish racist acts on the basis, for example, of the legislation on breaches of the peace. This deficiency is largely due to the fact that the institutions concerned (namely the police, judges and prosecutors) are not aware of the relevant provisions of the Criminal Code or of the procedure relating to them.<sup>13</sup>

#### ***Recommendations:***

28. ECRI urges the Romanian authorities to ensure that the provisions of the Criminal Code governing racist offences are fully applied. It recommends that they continue to provide training courses on these provisions to all the state agencies concerned, and in particular to the judiciary and the police. It also recommends that the Romanian authorities conduct campaigns, in co-operation with NGOs and civil society, to inform the general public about the new provisions of the Criminal Code concerning the fight against racism and intolerance.
29. In its second report, ECRI recommended that the Romanian authorities introduce provisions defining ordinary offences with a racist motive as specifically racist offences and that they take racist motivation into account as an aggravating circumstance for sentencing purposes.
30. None of the provisions of the new Criminal Code allow racist motivation to be taken into account as an aggravating circumstance for sentencing purposes. This Code does not include any provisions defining ordinary offences with a racist motive as racist offences either.

#### ***Recommendations:***

31. ECRI again recommends that the Romanian authorities ensure that for sentencing purposes racist motivation is regarded as an aggravating circumstance, as indicated in paragraph 21 of its General Policy Recommendation No. 7. It also recommends that the authorities introduce into the new Criminal Code, which is to be adopted in July 2005, provisions defining ordinary offences with a racist motive as racist offences.

#### **Civil and administrative law provisions**

32. In its second report on Romania, ECRI expressed the hope that Government Order No.137/2000 on the prevention and punishment of all forms of discrimination would be adopted by Parliament and that appropriate steps would be taken to ensure its full implementation. ECRI also hoped that the authorities would continue to give priority to their efforts to promote wide-ranging awareness-raising measures aimed at the general public, employers and persons offering public services, and especially at those responsible for applying the law such as the judiciary and the legal profession as a whole.

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<sup>13</sup> For further information on the training received by judges, prosecutors and law enforcement officials, see the parts of the report entitled “Administration of justice” and “Conduct of law enforcement officials”.

33. Since the publication of the second report, Government Order No. 137/2000 was ratified by Law No.48/2002<sup>14</sup>, which now governs the anti-discrimination provisions. Law No.48/2002 punishes direct and indirect discrimination in areas such as employment and access to public services, health care, housing, public places, etc. It also empowers victims of discrimination to lodge complaints with the National Council Against Discrimination or before the courts. The Council, whose activities are subject to Government Order No. 137/2000, is tasked with sanctioning discriminatory acts and adopting positive anti-discrimination measures<sup>15</sup>.
34. ECRI welcomes the advances made with the adoption of Law No. 48/2002 and the establishment of the National Council Against Discrimination. It nevertheless notes that this law is hardly ever applied and that neither the players concerned (judges, prosecutors, lawyers and law enforcement officials<sup>16</sup>) nor the general public are aware of it. ECRI notes, moreover, that there are a number of lacunae in Law No.48/2002 which should be filled. The law does not provide for the burden of proof to be shared between the victim and the respondent in discrimination cases brought before a court or any other competent authority, as ECRI recommends in paragraph 11 of its General Policy Recommendation No.7. It does not require that the government ensure that the parties to which it awards contracts, loans, grants and other benefits respect and promote a non-discrimination policy.<sup>17</sup> In addition, the above-mentioned National Council Against Discrimination is facing problems due to the way it functions<sup>18</sup> and its lack of the necessary resources, so that it is barely able to exercise the powers conferred on it by this law. ECRI consequently notes that much remains to be done to enable victims of discrimination to assert their rights.

#### ***Recommendations:***

35. ECRI strongly recommends that the Romanian authorities ensure that Law No. 48/2002 is fully applied. In this respect, it recommends that they take the necessary steps to train judges, magistrates, lawyers and law enforcement officials throughout the country so that they may improve their knowledge of this law and apply it more fully. ECRI also recommends that the authorities conduct information campaigns throughout the country so that victims of discrimination may benefit from Law No.48/2002 and from the powers of the National Council Against Discrimination.
36. ECRI recommends that the Romanian authorities adopt a provision enabling the burden of proof to be shared between a victim of discrimination and the respondent before the courts or any other authority. On this point, it draws the Romanian authorities' attention to its General Policy Recommendation No. 7.
37. ECRI recommends that the Romania Government ensure that the public authorities to which it grants certain benefits respect and promote the principle of non-discrimination, as it recommends in paragraph 9 of its General Policy Recommendation No.7.

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<sup>14</sup> This law was published in the Official Journal, No.69, on 31 January 2002.

<sup>15</sup> The National Council Against Discrimination was set up by Government Decision No. 1194 of 27 November 2002.

<sup>16</sup> For further information on the training courses provided to the judiciary and to law enforcement officials, see the parts of the report entitled "Administration of justice" and "Conduct of law enforcement officials".

<sup>17</sup> See paragraph 9 of General Policy Recommendation No.7.

<sup>18</sup> For a more detailed discussion of the powers and work of the National Council Against Discrimination, see the part of the report entitled "Specialised bodies and other institutions".

38. ECRI notes that the Romanian authorities have adopted Law No. 7/2004 on the Code of Conduct for Public Officials. The code requires public officials to comply with the principle of citizens' equality before the law and the public authorities, by eliminating all forms of discrimination on, among other grounds, nationality and religious belief. ECRI notes, however, that most public officials are unaware of this law and of the other texts on discrimination. For example, during a survey of their level of knowledge of discrimination issues, only 40% gave the right answer although there were only two possible choices. These results thus demonstrate that awareness-raising work will have to be done among public officials before they are in a position to fully apply Law No.7/2004.

**Recommendations:**

39. ECRI recommends that the Romanian authorities arrange training courses to make public officials aware of anti-discrimination issues. It also asks them to inform public officials about Law No. 7/2004 to ensure that they are in a position to apply it to the full. In this respect, awareness-raising campaigns should be conducted throughout the country. ECRI also recommends that the Romanian authorities ensure that the general public has the necessary information on this law and on the responsibilities it confers on public officials.

**- Electoral law**

40. In its second report, ECRI recommended that the Romanian authorities reconsider the 5% threshold set for the eligibility of candidates in local elections, in the light of the effect it has had on minority group representation in local political life. It noted that at national level each national minority had the automatic right to one seat in Parliament, even if its representatives did not meet the 5% threshold of votes.
41. ECRI notes that since the publication of its second report, the above-mentioned 5% threshold for eligibility in local elections has not been altered. It also notes with great concern that Law No.67/2004 on Local Elections, published in the Official Journal on 29 March 2004, poses serious problems with regard to the plurality of the representation of national minorities in Parliament. For example, Article 7<sup>19</sup>, paragraph 2 of this law considers as national minority organisations only those who are already represented in Parliament. This Article therefore places national minority organisations which are not represented in Parliament at a disadvantage in relation to those that are. Thus, national minority organisations which are already represented in Parliament can field candidates without any restrictions whatsoever, while those organisations within the same minority group which are not represented in Parliament are subject to the very restrictive conditions laid down in paragraphs 3 and 4 of this Article. The European Commission for Democracy through Law (the Venice Commission) considered that Article 7 of Law No. 67/2004 infringed the principles of equality, of proportional representation of national minorities and of political pluralism<sup>20</sup>. ECRI thus notes with concern that in practice Article 7 of Law No. 67/2004 on Local

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<sup>19</sup> Article 7, paragraph 3 provides in this respect that "Candidatures may also be put forward by other legally established organisations of citizens belonging to national minorities, which submit a list of members to the Central Electoral Bureau. The number of members may not be less than 15% of the total number of citizens who stated in the latest census that they belonged to the minority concerned". Paragraph 4 of this Article establishes the criteria required to meet the conditions laid down in paragraph 3, providing that "If the number of members required to meet the conditions laid down in paragraph 3 is greater than 25,000 persons, the list of members shall comprise at least 25,000 people residing in at least 15 of the country's counties and in the municipality of Bucharest, but no less than 300 people in each of these counties and in the municipality of Bucharest".

<sup>20</sup> Opinion No. 300/2004 on the Law for the Election of Local Public Administration Authorities in Romania, adopted on 4 December 2004, paragraph 52.

Elections in fact prevents national minorities from freely choosing the organisations which are to represent them at local level, whereas this is not the case for the majority.

**Recommendations:**

42. ECRI urges the Romanian authorities to amend Article 7 of Law No. 67/2004 on Local Elections to enable national minorities to elect their representatives at local level under the same conditions as the majority, in full compliance with the democratic principles of political pluralism and freedom of choice.

- ***Regulations concerning restitution of confiscated or expropriated property***

43. In its second report on Romania, ECRI noted that some problems persisted with regard to the restitution of property confiscated or expropriated from Churches and communities under the communist regime. While recognising the difficulties and complexities involved, ECRI encouraged the authorities to continue in their efforts to resolve this issue to the satisfaction of the parties concerned.

44. Romania has adopted Law No.501 on the restitution of religious property confiscated by the communist regime and Law No. 66/2004 which provides for the restitution of property previously owned by national minorities. However, ECRI notes that despite the progress made in legislative terms, the issue of the restitution of property to religious communities and national minorities has not yet been resolved in practice. Some problems persist as regards the application of the law and of decisions concerning restitution. Some items of property have been demolished, while others now belong to third parties, which slows down the restitution process and makes it more complicated. In addition, the procedure for restitution of property is not always clear or complied with. As the compensation system has not yet been properly regulated, some communities therefore receive only a very small proportion of the property requested. For example, the Jewish community has received only 2% of the private property requested, while Greek Catholics have obtained only 3 buildings out of the 54 whose restitution they have requested. Moreover, the Greek Catholic community's buildings have been returned only on the basis of an order which can be challenged at any time because it has never been formally adopted by Parliament. As a result, this community has been able to recover only two of those buildings because the mayor of the town in which the third is located refuses to apply the order.

45. ECRI notes with concern that the restitution of churches previously belonging to the Greek Catholic Church has become a source of tension between the latter and the Orthodox Church. Despite attempts to reach a friendly settlement, the Orthodox Church refuses to return these churches to the Greek Catholic Church and the authorities do not appear to be taking action to enforce the law. ECRI therefore hopes that the authorities will take a more active part in resolving issues relating to the restitution of Greek Catholic churches to ensure that the law is applied fairly, in a spirit of tolerance and mutual respect.

**Recommendations:**

46. ECRI urges the Romanian authorities to ensure that the legislation on property confiscated during the communist period is applied fairly. It recommends that they establish a procedure clearly regulating each party's rights and responsibilities.

47. ECRI also recommends that the Romanian authorities take account of the specific nature of the different communities' claims and provide solutions suited to their situation.

48. ECRI emphasises the need to encourage the different communities to reach an equitable solution when they face disputes concerning the restitution of religious property. It therefore recommends that the Romanian authorities enforce the law and encourage them to initiate a constructive dialogue.

### **Administration of justice**

49. In its second report, ECRI urged the Romanian authorities to undertake a review of the functioning of the judicial system in order to ascertain the extent to which discrimination against members of the Roma community occurs in the administration of justice. It also considered that steps should be taken to combat such discrimination, including special training in the area of non-discrimination for future judges and on-the-job training for judges already appointed, as well as further measures to combat discriminatory practices on the part of law enforcement officials.

50. The Romanian authorities have said that training courses have been provided to law students and to members of the judiciary and law enforcement agencies. For example, the National Legal Training Institute provides courses for first and second year students on the European Convention on Human Rights and on the constitutional and legislative provisions on discrimination. The Romanian Institute for Human Rights also provides human rights courses, including courses on the case-law of the European Court of Human Rights, to the National Legal Training Institute. In 2004, a number of magistrates attended seminars on the issue of discrimination in the Romanian judicial system and on the civil and criminal aspects of the European Convention on Human Rights.

51. Despite the Romanian authorities' efforts to train members of the judiciary, the latter are still largely unaware of anti-racism issues. ECRI thus notes that Romania still has no case-law on discrimination issues. As indicated above, this is partly because victims of discrimination are unaware of both the legislation and the procedure in force. However, judges, prosecutors and lawyers have not included the issue of discrimination in their *modus operandi*, since they are not aware of the legislation. ECRI therefore hopes that the Strategy for Judicial Reform 2005-2007 will include a clear and continuous policy for training members of the judiciary regarding the legislation on discrimination and its implementation.

52. As regards the training of law enforcement officials concerning discrimination issues, see below the part entitled "Conduct of law enforcement officials".

### **Recommendations:**

53. ECRI recommends that the Romanian authorities continue to provide for training courses on discrimination issues in the curriculum of the National Legal Training Institute. It also recommends that they provide in-service training to members of the judiciary already in post in order to ensure that the legislation on discrimination is fully applied and complied with.

### **Legal aid**

54. In its second report, ECRI recommended that the Romanian authorities ensure that the system of free legal aid was widely publicised to provide the victims of discrimination with access to legal recourse. ECRI recommended that initiatives in this field be developed in conjunction with non-governmental organisations working to combat racism and discrimination.

55. Articles 74 to 81 of the Code of Civil Procedure provide for the manner in which an indigent person can obtain legal aid in civil proceedings. He can obtain an exemption, a deduction or an extension of the deadline for paying the judicial

stamp tax and can avail themselves of the services of an officially assigned lawyer. All requests for legal aid must be addressed to the court in writing, with documentary evidence, notably on the person's financial situation. The other party can refute this evidence. However, as the procedure for requesting legal aid is relatively complicated, very few people obtain this aid.

### ***Recommendations:***

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

### **Specialised bodies and other institutions**

#### **- *National Council for Combating Discrimination***

57. In its second report, ECRI felt that the new National Council Against Discrimination should ideally be developed along the lines of General Policy Recommendation No. 2 and urged the authorities to consider closely the issue of how best the Council might fulfil its aim in terms of its composition and mandate.
58. As stated above, the National Council for Combating Discrimination (the "NCCD"), which was set up according to Government Order No. 137/2000, is the body responsible for fighting discrimination in Romania. The NCCD's primary task is to rule on complaints lodged by legal or natural persons or to deal of its own motion with cases falling within its remit. It is empowered to impose fines and also draws up binding instructions in specific areas in which it wants to lay down guidelines or explain or clarify specific discrimination issues. The NCCD is also empowered to settle disputes by mediation and can assist victims of discrimination when they appear before a court. It cannot, however, bear their legal costs. The Romanian government is also required to consult the NCCD before putting a draft law before Parliament and before its adoption.
59. Since the publication of ECRI's second report, most of the NCCD's decisions have concerned discriminatory acts against Roma. Between 2002, when the NCCD began to operate, and 2004, it received 146 complaints of discrimination on grounds of national or ethnic origin, 20 complaints on grounds of religious discrimination and 3 complaints on grounds of linguistic discrimination. Most of the cases decided by the NCCD concern discrimination in access to public places, notably bars, restaurants and discotheques, as well as articles with racist connotations which have been published by certain newspapers – Roma being the most frequent targets of this type of discrimination. The NCCD has also given decisions and imposed fines in cases of school segregation and discrimination in access to housing in respect of Roma<sup>21</sup>.
60. ECRI notes that one of the major problems facing the NCCD is its lack of independence from the political authorities. Since its inception in 2002, it has been headed by three successive officials, although the latter are appointed for a period of seven years. This is because whenever the government changes, a new person is appointed to head the institution. On this point, ECRI notes that a draft law on the status of the NCCD is being drafted and should be adopted this year. According to information supplied by the NCCD, the law should ensure that it is more independent, since the members of its steering committee will be

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<sup>21</sup> For further information on the situation of the Roma in Romania, see the part of the report entitled "Specific issues".

appointed by Parliament on the basis of recommendations by NGOs, the Chamber of Deputies and the government. ECRI has also been informed that there will be a two-week public debate on this draft law.

61. The fact that the NCCD has received rather few complaints of discrimination since 2002 demonstrates that it has not yet reached a satisfactory level of activity and is still largely unknown to the general public. According to a survey conducted by the NCCD itself, very few people know of its work. ECRI notes that according to the NCCD, a review of its work is to be conducted and branches are to be opened in the rest of the country. It nevertheless notes that the NCCD does not have the necessary resources to perform its tasks, and considers that this review should serve, among other things, to identify its needs more closely and provide it with the necessary funds and staff. The NCCD has, moreover, informed ECRI that a project funded by the European Commission, which started in February 2005 and is meant to end in August 2006, aims to strengthen its operational capacity and increase its impact. This project thus intends, *inter alia*, to improve Romania's legislation in the field of discrimination by examining the laws currently in force in order to make proposals if necessary. Within the framework of this project, NCCD staff will also receive training on, amongst others, national and international anti-discrimination legislation.
62. Besides the above-mentioned problems, ECRI notes that the NCCD's decisions do not state the grounds upon which they are based in sufficient detail, since they merely quote the applicable law and conclude as to whether or not there has been a discriminatory act. As a result, these decisions are often quashed when challenged by the respondent before the courts. ECRI also notes that the NCCD's steering committee does not include any Roma members. As most of the discrimination cases referred to the NCCD concern members of the Roma community, ECRI considers it important to ensure that the latter is represented on this body at all levels. As regards the mediation procedure established by the NCCD, ECRI notes that as the institution does not have a section specifically responsible for applying the procedure, the persons acting as mediators in a given case are also required to decide on it.
63. Lastly, ECRI notes that although, as indicated above, the NCCD is also empowered to state its opinion on laws before they are discussed by Parliament, the authorities still make too little use of this measure. The NCCD has informed ECRI that it has only been asked to make use of this mechanism for the past six months.

#### **Recommendations:**

64. ECRI recommends that the Romanian authorities ensure that the new draft law on the status of the NCCD takes into account this institution's shortcomings. It urges them to adopt the law without delay so that the NCCD may be fully operational and able to exercise its responsibilities under better conditions. On this point, it recommends that the Romanian authorities draw on its General Policy Recommendations No. 2 and No. 7, which provide among other things that specialised bodies dealing with racism should be provided with sufficient funds to carry out their functions and should function without interference from the state. It also recommends that they ensure that the new law on the NCCD establishes a clear mediation procedure to preclude the NCCD from acting both as mediator and judge. ECRI also calls on the authorities to ensure that this law strengthens the NCCD's capacity for investigation and research as well as its legal department.



65. ECRI recommends that the authorities ensure that the NCCD is better known to the general public and to those affected by its mandate, namely national minorities, judges, prosecutors, lawyers and law enforcement officials.
66. ECRI strongly recommends that the authorities ensure that the NCCD has a member of the Roma community on its steering committee and in all its constituent structures. It also considers it vital for the NCCD to have branches at local level.
67. Lastly, ECRI considers that the NCCD should be consulted by Parliament more often and that its recommendations on existing laws and its opinions on draft laws should be taken into consideration.

- ***People's Advocate***

68. In its second report, ECRI felt that the Office of the People's Advocate had an important role to play as an institution to which individuals could file complaints for discrimination. In this respect, ECRI was pleased to learn that a draft law before Parliament might make parliamentary consultation of the People's Advocate compulsory as regards human rights issues. ECRI therefore recommended that the Romanian authorities provide the Office of the People's Advocate with additional staffing and financial resources to enable it to open branches at regional level, with a view to facilitating contacts between the Office and persons who prefer to bring complaints in person.
69. The Office of the People's Advocate was set up eight years ago. It is responsible for settling disputes between individuals and government agencies and examines, inter alia, matters relating to national minorities, religious cults, justice and the police. The People's Advocate is also involved in checking the constitutionality of laws. Its other tasks include presenting annual reports to the Romanian Parliament, either on its own initiative or at the Parliament's request. However, Parliament is not obliged to take account of these recommendations. If the People's Advocate notes that the manner in which a complaint that was filed before him has been resolved falls within the purview of the judiciary, he may, depending on the case, either contact the Ministry of Justice, the Ministry of Public Affairs or the Chair of the relevant judicial body, who are required to inform him of the measures that have been taken.
70. The People's Advocate has informed ECRI that its recommendations can be applied only if the authorities are prepared to co-operate. For example, if someone informs the Office that the authorities have not implemented one of its decisions, it actually has no power to compel them to do so. The People's Advocate has also told ECRI that in general, the complaints it lodges at government level produce no result. ECRI also notes that although the Office of the People's Advocate has a staff of 90, NGOs deplore the fact that it refers many of the complaints lodged with it back to them, informing them that it lacks the resources to deal with them and that they have better access to the authorities than it does. Furthermore, some people have complained to NGOs that when they went to the Office of the People's Advocate to ask for help, it referred them back to the NGOs.

***Recommendations:***

71. ECRI urges the authorities to ensure that the People's Advocate's decisions are applied by all the bodies concerned, at all levels.
72. ECRI also reiterates that the Romanian authorities should make parliamentary consultation of the Office of the People's Advocate compulsory regarding human rights questions in order to reinforce this institution.

73. ECRI considers it essential that anyone who so wishes should have the opportunity to be heard by the Office of the People's Advocate. It consequently recommends that the authorities increase the resources available to it.

- **Department for Interethnic Relations**

74. In its second report, ECRI encouraged the Romanian Government to continue to give a high priority to the activities of this Department and to ensure that it received sufficient funding and resources to carry out its task successfully at both national and regional level.

75. The Department for Interethnic Relations (the "Department"), which was part of the Ministry for Public Information until 2003, is now under the authority of the Prime Minister. The Department is responsible for distributing funds for combating intolerance, by providing financial aid for programs and projects that have been developed by NGOs in order to preserve and promote minorities' ethnic, cultural, linguistic and religious identities. This body also drew up and promoted the draft law for the ratification of the European Charter for Regional or Minority Languages. It also takes part in almost all parliamentary sessions. However, as it only has a small staff for the time being, it works mainly with NGOs. The Department has also informed ECRI that it has opened a branch in Timisoara to strengthen its co-operation with national minority organisations at local level. ECRI welcomes the Department's assurances that this year it intends to place greater emphasis on the implementation of the laws governing national minorities.

76. As regards the Department's work, ECRI notes that Decision No. 141/2004 on the distribution of resources provides for funds to be allocated only to the organisations mentioned in the decision, which are members of the Council for National Minorities. As a result, only those national minority organisations which are represented in Parliament receive this funding. ECRI considers that this decision violates the right of national minorities to diversified political representation, a fact that it has already deplored above.

**Recommendations:**

77. ECRI recommends that the Romanian authorities support the work of the Department for Interethnic Relations by providing it with the necessary resources to carry out its task. ECRI emphasises in this respect that it is important for the Department to have branches in all the regions of the country.

78. ECRI recommends that the Romanian authorities amend Decision No.141/2004 so as to enable all national minority organisations to receive funds from the Department for Interethnic Relations.

**Education and awareness-raising**

- **School education**

79. In its second report, ECRI recommended that more interactive and participative methods for teaching children about issues of racism and intolerance should be elaborated and that teaching materials should be introduced which reflect more closely the diverse nature of Romanian society and the contribution made by the different minority groups throughout the country's history and in the present day.

80. Topics such as human rights, the Holocaust and the genocide of the Roma during the Second World War are currently taught to 7<sup>th</sup> grade pupils. The Romanian authorities have also informed ECRI that as of 2006, these topics will be added to the curriculum for 10<sup>th</sup> and 11<sup>th</sup> grade pupils. In addition, in 2004,

following a report by the Elie Wiesel Foundation, information on the persecution of Jews in Romania during the Second World War was included in Romanian school curricula. According to the Romanian authorities, 200 schools already offer an optional course on the Holocaust and two teachers have undertaken to write a textbook on the subject, while another is currently writing a textbook for another optional course on the history of the Jews in Romania. Moreover, three Romanian authors have also written a textbook on the history and culture of the Roma, which the Ministry of Education intends to have published.

81. ECRI notes that despite the above-mentioned measures, which it welcomes, much remains to be done in the area of education. NGOs still deplore the fact that Romanian school textbooks contain stereotypes and prejudice about minority groups. Some textbooks, for example, continue to describe the arrival in Romania of “hordes of barbarian nomads who came from the East to spread terror”, and the Hungarians are sometimes depicted as foreigners who occupied the Transylvania region. ECRI also notes that the history course taught to Romanian pupils is entitled “History of the Romanians” rather than “History of Romania”. It would also appear that although most derogatory references to Roma have been deleted from school textbooks, too little attention continues to be paid to their contribution to Romanian society.
82. The attitudes of some headmasters or headmistresses, teachers and parents towards pupils belonging to minority groups, in particular Roma children<sup>22</sup>, is another problem which the Romanian authorities should resolve. All too often, some teaching staff and parents still behave negatively towards Roma pupils, even in schools where non-Roma children are more open-minded.
83. ECRI also notes that Romania does not have a clear policy for including the culture and identity of minority groups living in Romania in school curricula. The efforts made to date remain too sporadic and it is not clear to ECRI whether the above-mentioned measures are applied throughout the country or only in the large towns.

#### ***Recommendations:***

84. ECRI urges the Romanian authorities to draw up a school curriculum which reflects Romania’s cultural diversity and teaches about minority groups’ contributions to the country’s history, at all levels of the school system. It considers in this respect that all derogatory references to minority groups should be deleted from school textbooks. It also recommends that the Romanian authorities ensure that school curricula are applied throughout the country.
85. ECRI calls on the Romanian authorities to include issues relating to respect for cultural diversity in the teacher training programme. It also recommends that they prepare teachers better for teaching children from different cultural backgrounds.

### **Reception and status of non-citizens**

#### **- *Refugees and asylum seekers***

86. In its second report on Romania, ECRI hoped that, although it was still rather early to evaluate the functioning of the recently established legal and administrative framework for dealing with refugees and asylum seekers, this framework would satisfactorily resolve possible areas of concern raised by various parties prior to its establishment: these concerns related inter alia to the situation of asylum seekers held for long periods in administrative detention and

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<sup>22</sup> For further information on the situation of Roma children in the Romanian school system, see the part entitled “Specific issues”.

to possible shortfalls in the decision-making process concerning the granting of refugee status. ECRI particularly wished to stress the need to ensure that officials dealing with asylum requests at border points and within the country received ongoing training in human rights and in dealing with persons from various backgrounds and cultures in a non-discriminatory fashion.

87. ECRI notes that since the publication of its second report, Romania has adopted a number of measures on the protection of refugees. For example, Law No. 176 adopted in May 2004 contains a definition of refugees which is consistent with the 1951 Geneva Convention on refugees. It also entitles persons who have received refugee or “humanitarian” status to work and to have access to health care, social security and housing services, as well as education. The United Nations High Commissioner for Refugees (the “UNHCR”) has also informed ECRI that according to the law on foreigners, asylum seekers who lack the necessary documents to prove their nationality can be granted the status of “tolerated” person if there are objective reasons which prevent them from returning to their country. However, this status does not entitle them to work in Romania.
88. ECRI notes that two new reception centres for asylum seekers have been opened, one near the eastern border (at Galez) and the other in the area of the western border (at Timisoara). According to the Romanian authorities, the border police have received training in how to receive asylum seekers. The UNHCR has moreover informed ECRI that the European Union offers border police, public officials and law enforcement officials training courses and technical assistance in matters relating to the protection of refugees. The UNHCR has also concluded an agreement with the Romanian authorities to introduce a permanent rota system for the border police in order to reduce the risks of corruption.
89. Problems nevertheless remain in terms of the legislation on asylum seekers and refugees and its application. For example, although the definition of a refugee is now, as indicated above, consistent with the Geneva Convention, that of the family is very restricted. Only legally married spouses and single minor children are regarded as members of a family for the purposes of family reunification. ECRI also notes that persons who have received “humanitarian” status are not entitled to family reunification. The legislation contains a few contradictory provisions, since a parent who has received refugee status is entitled to be joined by his or her children, while an unaccompanied minor cannot be joined by his or her family. Furthermore, the asylum application procedure is very short: although the law on foreigners entitles asylum seekers to lodge an appeal with suspensive effect, they are required to leave Romania within 15 days of their application being rejected. They have only 10 days to appeal and only 3 days if the application was made at the border. On this point, the UNHCR is co-operating with NGOs and the Norwegian Government to provide asylum seekers with legal aid and access to interpreters. Yet, although the law entitles asylum seekers to legal aid, the Romanian authorities have not set up any system to that end. Moreover, as interpreters are required to register with the Ministry of Justice, it is hard to find persons who speak languages that are little used in Romania. ECRI is also greatly concerned to learn that any foreigner who is the subject of a deportation order or has been declared *persona non grata* by the Romanian authorities can be placed in detention for an indeterminate period.
90. According to the information received by ECRI, only 4% of asylum seekers obtain refugee status. ECRI notes that 60% of them leave the country because they are unable to integrate. The main obstacles to the integration of refugees are the problem of the recognition of their diplomas and work experience and their integration into the labour market. In addition, the National Employment Agency does not cater to refugees because it is not aware of the relevant law or of

refugees' needs and lacks the resources to remedy these deficiencies. ECRI also notes that although the law provides for free Romanian language courses to refugees, the latter do not even have access to fee-paying courses. ECRI is also very concerned by the fact that Romania intends to open detention centres for asylum seekers and that the National Office for Refugees has opened a 20-bed centre for unaccompanied minors at Bucharest airport.

91. Although there are as yet very few asylum seekers in Romania (according to the UNHCR, 50 asylum applications are made in Romania each year), much remains to be done to ensure that the legislation concerning them is applied. ECRI notes that the Romanian authorities still depend largely on the UNHCR, NGOs, the European Union and other governments to finance programmes for asylum seekers and refugees. Thus, NGOs deplore the fact that when these organizations and governments withdraw their financial aid, the Romanian authorities do not take over their work. This is the case, for example, with language course programmes and programmes designed to help refugees enter the labour market.

#### ***Recommendations:***

92. ECRI considers that the Romanian authorities should have a consistent body of legislation on the protection of asylum seekers and refugees. It therefore recommends that they ensure that unaccompanied minors who have been granted refugee status are entitled to family reunification on the same footing as adults. It also recommends that the Romanian authorities amend the legislation on asylum seekers to give the latter enough time to submit their applications and to lodge any appeal against a negative decision.
93. ECRI emphasises the importance of fully and equitably applying the legislation on asylum seekers and refugees. On this point, it urges the Romanian authorities to ensure that persons who have received refugee or "humanitarian" status or status as a "tolerated" person fully enjoy the rights granted to them by Law No. 176. ECRI therefore recommends that they provide these persons with free Romanian language courses and set up programmes to integrate them into the labour market, give them access to public services, etc.
94. ECRI urges the Romanian authorities to abandon the idea of building detention centres for asylum seekers. It also urges them to close the centre for unaccompanied minors recently built at Bucharest airport without delay. Pending the closure of this centre, ECRI recommends that the Romanian authorities receive minors there in full compliance with the Geneva Convention and the UN Convention on the Rights of the Child, and allow the UNHCR and the Red Cross unrestricted access to the centre.
95. ECRI recommends that the authorities continue to provide the border police and all public officials required to deal with asylum seekers and refugees with training courses on the 1951 Geneva Convention and the relevant legislation. It also recommends that they provide the National Office for Refugees with the necessary funds and staffing to carry out its tasks.
96. ECRI urges the Romanian authorities to repeal the legal provisions authorising detention for an indeterminate period for persons who are the subject of a deportation order or have been declared *persona non grata*.

#### **Vulnerable groups**

97. As regards the Roma, see the part below entitled "Specific issues".

## Antisemitism

98. About 6,000 Jews currently live in Romania. NGOs have informed ECRI that one of the major problems facing the Jewish community at present is the existence of some neo-Nazi organisations which continue to deny that the Holocaust took place in Romania or to minimise its importance. As stated above, one of these organisations, modelled on the Iron Guard, a fiercely antisemitic organisation which went on the rampage in Romania during the Second World War, is pursuing its activities without being punished by the authorities. Its antisemitic or negationist publications and texts are openly sold by some bookshops in the country's large towns. This organisation has also attempted to give a less negative image of the Iron Guard by using the freedom of expression argument. ECRI therefore notes that although the authorities have recently made efforts to improve public knowledge of this dark period in Romanian history, they are not yet forceful enough in applying the legislation intended to punish advocates of revisionist or antisemitic views.
99. As stated earlier, there are still streets in Cluj and Targu Mures which bear the name of Ion Antonescu, who played an active part in the Holocaust in Romania. Statues of this man have also been put up in the courtyards of some churches, which refuse to remove them on the pretext that he helped finance the building of these churches. On the other hand, ECRI notes that very few monuments commemorating the victims of the Holocaust have been built in Romania. Moreover, it would appear that two of Ion Antonescu's main associates, who played a key role in the deportation of Jews during the Second World War, are still covered by the rehabilitation granted to them in 1997-1998.

### ***Recommendations:***

100. ECRI urges the authorities to effectively punish organisations and individuals who promote revisionist or antisemitic views in order to deny or minimise the existence of the Holocaust in Romania. It encourages them to continue informing and educating the public about this period of Romanian history.
101. ECRI also urges the Romanian authorities to apply the law to all those who continue to foster the cult of persons who took an active part in the Holocaust, and to waive the immunity granted to those who are still alive so that they may be tried.

## Conduct of law enforcement officials

102. In its second report, ECRI noted that serious problems persisted throughout the country as regards police attitudes and behaviour towards members of the Roma community. In particular, ECRI deplored the fact that cases of police violence against members of the Roma community, including the use of firearms, continued to occur and had led to serious and sometimes lethal injuries. ECRI therefore advocated an independent investigative mechanism to look into police abuses, with power to take action where necessary.
103. ECRI welcomes the fact that since the publication of its second report, Romanian police have been demilitarized. This renders civilian courts competent to examine complaints concerning police abuses. ECRI moreover notes that the Romanian General Police Inspectorate drafted and circulated Provision No. 379830/01.03.2004 on measures taken by heads of units in, amongst others, the area of discrimination. Moreover, a code of professional conduct for police officers has been adopted in Romania. Article 2 e) of the code provides that police officers must comply with the principles of impartiality and non-discrimination in the performance of their duties. Article 7 further provides that police officers have a duty to develop good relations between society and the

institution they represent, without any form of discrimination. In addition, Law No. 7/2004 on the Code of Conduct of Public Officials, referred to earlier, requires them to comply with the principles of equality and non-discrimination. However, the Romanian authorities themselves acknowledge that police officers and law enforcement officials need training on the subject of discrimination and that an institution responsible for ensuring compliance with the Code of Conduct and with Law No.7/2004 still needs to be set up. For the time being, the Human Rights Committee within the Ministry of the Interior itself gathers information on non-discrimination and monitors the application of the legislation.

104. As regards the existence of a body responsible for looking into complaints made against police officers or law enforcement officials, the Romanian authorities have told ECRI that a procedure has been set in motion for that purpose within the Ministry of the Interior itself. Thus, a body placed under the sole authority of the Ministry of the Interior is empowered to investigate all violations of the Code of Conduct and of criminal law. Two different investigative and punitive procedures are carried out depending on the nature of the offence. However, although the Romanian authorities have acknowledged that large numbers of police officers have been arrested for wrongful behaviour, they have provided no information on the victims. Furthermore, ECRI notes with concern that despite the existence of these procedures, the Romanian authorities have stated that no complaints have been recorded against police officers or law enforcement officials for discriminatory acts. It therefore wonders whether this does not reflect a lack of confidence among the general public in the authorities' capacity to punish the perpetrators of such acts.
105. ECRI also notes that despite a decrease in the level of police violence against members of the Roma community since the publication of its second report, there are still some urban and forest wardens who commit abuses against them. For example, ECRI has been informed that many instances of wrongful behaviour towards members of the Roma community have been reported at Buhuse. It is also concerned at reports that in the Moldavian region of Romania, during a raid on a Roma community by about 70 police officers and members of the special forces, two people, including a 13-year-old minor suffered gunshot wounds. ECRI therefore notes that as the prosecutor decided not to prosecute the alleged offenders, an NGO took the case to court with a claim for damages. ECRI hopes that this case will reach a successful conclusion, partly in order to send a clear message to police officers and law enforcement officials that this kind of behaviour is unacceptable. ECRI also notes that the Romanian authorities have said that very few Roma apply for recruitment to the police force.

#### ***Recommendations:***

106. ECRI urges the Romanian authorities to provide police officers and law enforcement officials with regular training in the legislation on discrimination.
107. ECRI also recommends that the Romanian authorities set up an institution responsible for ensuring compliance with the principles of non-discrimination included in the Code of Professional Conduct for police officers and in Law No. 7/2004 on the Code of Conduct for Public Officials. It recommends that they conduct enquiries to establish why no complaints of discrimination have been lodged against police officers or law enforcement officials.
108. ECRI recommends that the Romanian authorities frame a policy for recruiting members of the Roma community into the police force in order to, inter alia, facilitate mutual communication and relations.

## Media

109. In its second report, ECRI noted the media's tendency to refer to the Roma minority in derogatory terms or carry discriminatory advertisements. It stressed the importance of ensuring that the legislation in force to combat media excesses was consistently and rigorously implemented. It also encouraged the media professions to make full use of self-regulatory mechanisms, such as codes of conduct, and to promote and support reporting which presents issues relating to minority groups in a balanced and non-discriminatory fashion.
110. ECRI notes that in the national press there has been a certain decrease in the number of derogatory articles about Roma. This improvement is due to several factors: NGOs and supervisory bodies have increased their vigilance, journalists have received training courses on discrimination issues and the law has been amended. ECRI must nevertheless note that, as previously stated, the National Council for Combating Discrimination has imposed many penalties on the media for articles and opinions it considers discriminatory. This body has been criticised in this respect, since some consider that it has infringed the principle of freedom of expression. ECRI notes that the principle of freedom of expression is still all too often invoked to justify the failure to apply the law to media that publish racist articles. ECRI also notes that local media still publish racist articles and opinions about Roma. Several studies on the subject have demonstrated that the Roma are still mentioned chiefly in the context of criminal behaviour and that the majority population have a negative image of them. For example, 78% of the majority population do not wish to have Roma neighbours.
111. ECRI also notes that although the Centre for Independent Journalism and a number of NGOs and journalists have drawn up a code of conduct, it is not applied. The Romanian Press Club has also adopted a code of conduct, but no penalties have been imposed under this code.

### ***Recommendations:***

112. ECRI recommends that the Romanian authorities continue to offer the national and local media training courses on combating discrimination.
113. ECRI also recommends that the Romanian authorities ensure that Article 358 of the Criminal Code, which prohibits incitement to hatred, is applied more forcefully when the media publish discriminatory articles.

## Monitoring the situation

114. As regards the collection of ethnic data for the purpose of assessing the situation of national minorities, ECRI notes that there is no real practice of the kind in Romania. It has been informed that this data is collected solely with a view to applying certain positive measures, particularly in the sphere of education.

### ***Recommendations:***

115. ECRI recommends that the Romanian authorities consider ways of setting up a consistent and comprehensive data collection system to assess the situation of the different minority groups living in Romania and the scale of manifestations of racism and racial discrimination. A data collection system of this kind must comply with national legislation, with European regulations and with the recommendations on data protection and protection of privacy as set out in ECRI's General Policy Recommendation Policy No.1 on combating racism, xenophobia, antisemitism and intolerance. The Romanian authorities must ensure that data is collected in a spirit of full respect for the anonymity and dignity of the persons questioned and in compliance with the principle of unreserved



consent. In addition, the system for collecting data on racism and racial discrimination must take account of gender aspects, especially in terms of the possibility of double or multiple discrimination. Generally speaking, collecting data classified by ethnic origin will make it easier to identify the areas of life in which there may be direct or indirect racial discrimination and to determine the best ways of combating this type of discrimination.

## II. SPECIFIC ISSUES

### Situation of the Roma community in Romania

#### - *Strategy for Improving the Situation of the Roma*

116. In its second report, ECRI emphasised that the Roma community in Romania was particularly vulnerable to discrimination and disadvantage in many fields of life. It was therefore pleased to learn that a draft governmental National Strategy for Improving the Situation of the Roma had been drawn up, and it strongly encouraged the Romanian authorities to build upon the momentum and goodwill generated by the adoption of this strategy to ensure that the necessary resources and political support were made available in order to implement the range of measures planned.
117. ECRI notes with concern that the situation of the Roma in Romania remains disturbing. Members of the Roma community are still discriminated against in areas such as employment, education and access to public places, housing and health care services. The Strategy for Improving the Situation of the Roma (the "Strategy"), which was adopted in April 2001, is the first initiative taken by the Romanian Government to remedy this situation in a systematic manner. The Strategy is supposed to improve the situation of the Roma in terms of: 1) government agencies, 2) social security, 3) health care, 4) the economic situation, 5) justice, 6) child welfare, 7) education, 8) culture, 9) communication and 10) citizen participation. This Strategy is designed to span 10 years (the first 4 years being devoted to a general plan for the measures set out in it), and a joint committee comprising ministers of state from the ministries that are involved in this work, Roma experts and members of Roma organisations has been instructed to ensure its application and monitor the process.
118. Order No. 37/01.02.2002 set up the County Offices on the Roma, whose primary task is to assess the situation of Roma communities, identify solutions to their problems and maintain permanent liaison with local authorities. The National Agency for the Roma was set up by Emergency Order No.78/2004; its tasks include implementing the Strategy, framing strategies and managing the funds for the programmes set up for the Roma, and monitoring and assessing the activities carried out by the public authorities at local and national level<sup>23</sup>.
119. ECRI notes that the above-mentioned bodies lack funds and that the authorities do not appear to have the necessary political will to ensure the success of the Strategy. Four years after it was framed, this Strategy is far from having achieved its goals. Until 2003, only the European Union was financing projects under the Strategy. In spite of this, the authorities now consider that many of the measures included in the Strategy have been carried out, although no overall appraisal of the Strategy has yet been carried out. NGOs also point out the lack of consistency in applying the Strategy at local level and the fact that in some areas of activity it has quite simply not been applied. The Strategy is also criticised for its tendency to treat all the Roma communities in the same way, whereas their

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<sup>23</sup> For further information on the work of this body, see below the part of the report entitled "National Office for the Roma".

needs vary according to the problems they face. For example, many Roma communities still live below the poverty level and therefore have more pressing and urgent needs such as access to health centres, to drinking water, to programmes against malnourishment, to decent housing, etc.

#### ***Recommendations:***

120. ECRI urges the Romanian authorities to allocate the necessary funds to the bodies and programmes responsible for implementing the Strategy for Improving the Situation of the Roma. It recommends that they adapt the implementation of the Strategy to the different needs of the Roma communities, assigning priority to the most deprived.
121. ECRI urges the Romanian authorities to conduct an appraisal of the Strategy for Improving the Situation of the Roma as soon as possible in order to establish the results of the Strategy and redefine its parameters where necessary. This appraisal should be made public and transmitted to the NGOs concerned so that they may contribute to any redesigning of this Strategy.
122. ECRI stresses that a clear and consistent policy is vital to ensure the success of the Strategy for Improving the Situation of the Roma. It therefore calls on the Romanian authorities to show the necessary political will for the success of this Strategy.

#### **- *National Office for the Roma***

123. As stated above, the National Office for the Roma (the "Office") is responsible among other things for implementing the Strategy for Improving the Situation of the Roma. The Office has informed ECRI that it tried to revive the various institutions responsible for implementing the Strategy. However, it was not until the end of April 2005 that one of these institutions was to meet in order to adopt a general plan for the measures relating to this Strategy. The Office also said that it had written to the ministries and local authorities to find out about the problems confronting them. It found that although each ministry was supposed to resolve the problems falling within its remit, nothing had been done and it was left to the Office to take over the ministries' responsibilities.
124. ECRI notes that the National Office for the Roma does not have the necessary funds or staff to carry out its tasks efficiently. Although it is supposed to have 52 posts, the Office currently has only five staff members, who provide a basic service in terms of accounting, human resources and legal, administrative and secretarial services. ECRI also notes that the other bodies likewise tasked with applying the Strategy for Improving the Situation of the Roma at all levels and in all areas of life have not yet started work.
125. The National Office for the Roma has informed ECRI that a "Decade for the Inclusion of the Roma" was launched in February 2005 to narrow the gap between the Roma and the rest of the population in the areas of: 1) health care, 2) education, 3) employment and 4) housing. The Office said that the World Bank is supposed to fund the project and visited Romania in February 2005, when it met the ministries concerned and the Ministry of Finance, which will be distributing the funds. ECRI considers that this project must be carried out and must receive the funds it needs in order to achieve its objectives. It also wishes the various institutions responsible for implementing the Strategy for Improving the Situation of the Roma to be involved in the work on the Decade for the Inclusion of the Roma so as to avoid possible overlapping.

### ***Recommendations:***

126. ECRI recommends that the Romanian authorities provide the National Office for the Roma with the staff and funds it needs in order to implement the Strategy for Improving the Situation of the Roma. It also recommends that they allocate the necessary funds to the other bodies set up to apply this Strategy. ECRI further recommends that they ensure that the ministries responsible for implementing the Strategy fulfil their obligations.
127. ECRI recommends that the Romanian authorities ensure co-ordination of the activities relating to the Strategy for Improving the Situation of the Roma and to the Decade for the Inclusion of the Roma. To this end, it recommends that they set up a committee which would ensure co-ordination and co-operation between the institutions tasked with implementing these two programmes.

#### **- *Situation of the Roma in the area of education***

128. In its second report, ECRI noted that the Roma minority was particularly disadvantaged as regards education, with high levels of absenteeism and dropping out of the school system. It felt that even if such discrimination was not a reflection of institutional discrimination, it was most important to take steps to prevent its occurrence. ECRI therefore hoped that measures would be implemented without delay to change this situation and that their effectiveness in raising levels of educational achievement among disadvantaged Roma children would be closely monitored and evaluated.
129. The Romanian authorities have informed ECRI that a number of measures have been taken in the area of education to resolve the problem of discrimination against Roma children. By Notification No. 29323/20.04.2004, the Ministry of Education and Research has banned all forms of segregation in Romanian schools. In this connection, it is worth noting that Roma school mediators<sup>24</sup> help schools in integrating Roma pupils more fully by explaining, for instance, the difficulties facing these children such as the lack of resources enabling them to participate properly in the school curriculum. They also provide liaison between parents and schools and are responsible for giving teachers a better understanding of the situation of Roma children. ECRI also notes that since its second report, the authorities have provided technical training to Roma children who have left school, and have developed school textbooks for those who have not completed primary school. Steps have also been taken to train Roma teachers. ECRI has moreover been informed that places are reserved for Roma students in Romanian universities.
130. Nevertheless, ECRI notes that many problems remain. For example, in spite of the above-mentioned notification, Roma children are still segregated: they still all too often find themselves in schools of a distinctly lower standard than the others, or are relegated to the back of the classroom or placed in separate classes. As this Notification is not legally binding, few practical steps are taken against schools or teachers who breach its principles. ECRI also notes that despite recognition of the importance of their role, school mediators still do not have a clear and legally defined status. It also notes the Romanian authorities' statement that few Roma children assert their identity: during the 2002-2003 school year, only 160,000 Roma pupils identified themselves as such. Although this figure increased to 183,000 the following year, ECRI notes that only 10% of these pupils wished to learn Roma language and history. ECRI therefore notes that Roma children are faced with a problem of self-esteem which the authorities will have to help remedy.

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<sup>24</sup> A measure proposed by the Roma NGO Romani Criss.

131. ECRI notes with great concern that all too often the poverty in which many Roma communities still live prevents their children from fully participating in school curricula. For example, even when measures such as the “Bread Roll and Milk” programme are taken by the authorities to allow the poorest children (who are often Roma) to go to school, they do not succeed because the children go to school only to be able to eat and therefore do not attend classes. ECRI consequently considers that more effective measures must be taken in this respect.

#### ***Recommendations:***

132. ECRI urges the Romanian authorities to make Notification No.29323/20.04.2004 legally binding in order to make the application of the measures it proposes compulsory and to enforce its provisions.
133. ECRI recommends that the Romanian authorities continue to train Roma school mediators and give them a clear legal status. It encourages them to continue training Roma and non-Roma teachers in order to prepare them to work with pupils from different ethnic groups.
134. ECRI recommends that the Romanian authorities take steps to improve Roma children’s self-image. It considers that the Romanian authorities should teach about the Roma’s contribution to Romanian society throughout the country’s history, together with their culture and language, at all educational levels.
135. ECRI recommends that the Romanian authorities introduce programmes enabling Roma children to participate fully in classroom tuition. Free meals could be one of the facets of these programs.

#### ***- Situation of the Roma in the area of employment***

136. In its second report, ECRI noted that in the area of employment the Roma community was, once again, the minority group which faced particular disadvantage. It noted that members of the Roma community faced especially high levels of unemployment and were confined to low-level positions and jobs, chiefly on account of the discrimination against them. ECRI therefore stressed the importance of taking steps to eliminate concrete manifestations of discrimination on the labour market.
137. The Labour Code adopted in March 2003 includes a provision against discrimination. ECRI has been informed that the Ministry of Labour and the National Council for Combating Discrimination are working together on this issue. However, it notes with regret that the National Employment Agency has not taken any steps specially intended for Roma, since according to the Romanian authorities the law does not provide for this. ECRI also notes with concern the reports that since Roma do not identify themselves as such, it is difficult to determine their employment needs. Thus, in January 2003, only 4,300 of the persons registered by the National Employment Agency stated that they belonged to the Roma minority. Although the number increased to 15,700 in January 2004 and to 18,700 in January 2005, it remains very low in view of the fact that 530,000 people identified themselves as being Roma in the 2002 census.
138. ECRI therefore notes that the situation of the Roma on the labour market continues to give cause for concern. This is partly because some of the measures proposed by the government arouse little interest on the part of the private sector. Only a few firms take part in the scheme for employment grants for Roma. For example, in 2004, only 15 firms were involved in these grants as opposed to 400 in the grants for people with disabilities. Furthermore, although

Law No. 76/2002 gives young people and the unemployed access to employment and to loans, its provisions are so complicated that it is virtually impossible for Roma to benefit from it. ECRI also deplores the fact that the authorities do not appear to have taken steps to ensure the long-term integration of Roma into the labour market. It has found that a clear policy to that effect is lacking. It also notes that although 30 measures out of 32 are supposed to have been carried out in the area of employment under the Strategy for Improving the Situation of the Roma, it is unclear how the authorities reached this conclusion. Moreover, ECRI notes with concern that many Roma who have completed their university education fail to find jobs as a result of many employers' discriminatory practices. It further notes that although they are disproportionately affected by unemployment, very few members of the Roma community benefit from Law No. 416 on the Minimum Income, mainly because this allowance is allocated only twice a year.

#### ***Recommendations:***

139. ECRI urges the Romanian authorities to introduce programmes to ensure the long-term integration of Roma into the labour market. It recommends that they set up programmes granting preferential loans to Roma and positive recruitment measures.
140. ECRI calls on the Romanian authorities to ensure that state agencies, civil society and industry co-operate in order to integrate Roma more fully into the labour market. It also recommends that they ensure that the Strategy for Improving the Situation of the Roma continues to emphasize the need to integrate members of the Roma community into the labour market.
141. ECRI recommends that the Romanian authorities conduct information campaigns in the private and public sectors in order to publicise the legislation on discrimination. It reminds them of the importance of helping victims of discrimination in asserting their rights either before the National Council for Combating Discrimination or the courts.

#### ***- Persons without identity documents***

142. In its second report, ECRI was of the opinion that measures taken, in conjunction with representatives of civil society, should be widened and accelerated to regularize the situation of people who did not have identity papers. These measures should include awareness-raising campaigns about the advantages of obtaining identity documents and about the procedure for doing so, special training for the people responsible for assisting them in obtaining the right documentation, and measures to ensure that the administrative procedures involved are accessible and facilitated.
143. In Bucharest alone, there are at present 20,000 Roma without identity papers. A survey of 8,000 people carried out in this city in 2004 showed that 25% of the Roma population did not have identity cards and that 45.6% did not have birth certificates. Moreover, as children whose parents do not have identity cards do not receive birth certificates, members of the Roma community are disproportionately affected by this problem. The fact that many Roma do not have identity papers precludes them from buying property. As a result, they very often find themselves homeless; this constitutes a new hurdle for them in obtaining identity papers. This situation generates a vicious circle which is hard to break.
144. ECRI notes that the Romanian authorities have taken virtually no steps to alter this situation because they do not regard it as a priority. NGOs also deplore the fact that many Roma were unable to vote in the elections held at the end of November 2004 because they had no identity papers. Furthermore, ECRI notes

that projects to help Roma register their children at birth and obtain identity papers have been set up by NGOs, although the Strategy for Improving the Situation of the Roma provides for measures to that effect in its programmes.

***Recommendations:***

145. ECRI urges the Romanian authorities to carry out campaigns without delay to provide identity papers to members of the Roma community who do not have them. It reminds them that the measures provided for in this respect in the Strategy for Improving the Situation of the Roma must be fully applied and therefore recommends that they make sufficient funds available to the National Office for the Roma for that purpose.

- ***Other forms of discrimination against the Roma***

146. ECRI notes that some members of the Roma minority continue to live in insalubrious housing, often as a result of discriminatory measures by local authorities. Furthermore, some local authorities still evict Roma from their housing without observing the legal procedure for the purpose. ECRI has also received reports of Roma being expelled from municipal sites in the middle of winter, in the presence of the media.

***Recommendations:***

147. ECRI strongly urges the Romanian authorities to take steps to ensure that members of the Roma community have access to decent housing. It also calls on them to impose penalties on local government officials who engage in discriminatory practices against Roma in, amongst others, the area of housing.

148. In its second report, ECRI noted that underestimating the size of the Roma community in Romania was a major shortcoming in terms of the data collected. It therefore hoped that the 2002 census would produce a more accurate figure, since the changing situation in Romania and the building up of a Roma consciousness might encourage more Roma to identify themselves as such.

149. As indicated above, according to the results of the 2002 census, about 530,000 people stated that they were members of the Roma minority. However, this figure is disputed by NGOs and international organisations, who estimate that there are between 1 and 2 million Roma in Romania. There are several reasons for these results, one of them being the above-mentioned reluctance on the part of some Roma to state their ethnic origin. The discrimination which Roma continue to face prevents them from feeling comfortable with the idea of identifying themselves as such. On this point, ECRI hopes that projects to boost their self-image will be included in the Strategy for Improving the Situation of the Roma.

***Recommendations:***

150. ECRI recommends that the Romanian authorities take steps that will contribute to giving members of the Roma minority a more positive self-image, notably by devising school syllabuses to that end.

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