

ECRI REPORT ON ARMENIA

(fifth monitoring cycle)

Adopted on 28 June 2016

Published on 4 October 2016

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

ECRI Secretariat
Directorate General II - Democracy
Council of Europe
F-67075 STRASBOURG Cedex
Tel.: + 33 (0) 3 90 21 46 62
E-mail: ecri@coe.int

www.coe.int/ecri

ECRI REPORT ON ARMENIA

(fifth monitoring cycle)

Adopted on 28 June 2016

Published on 4 October 2016

TABLE OF CONTENTS

FOREWORD	7
SUMMARY	9
FINDINGS AND RECOMMENDATIONS	11
I. COMMON TOPICS	11
1. LEGISLATION TO COMBAT RACISM AND RACIAL DISCRIMINATION	11
- CRIMINAL LAW	11
- CIVIL AND ADMINISTRATIVE LAW	12
- SPECIALISED NATIONAL BODIES	14
2. HATE SPEECH	15
- TREATMENT OF HOMO/TRANSPHOBIC SPEECH IN THE CRIMINAL CODE	15
- DATA	16
- HATE SPEECH IN POLITICAL DISCOURSE	16
- RACISM IN OTHER FORMS OF PUBLIC DISCOURSE	16
- RACISM ON THE INTERNET AND IN THE TRADITIONAL MEDIA	18
- EXTREMIST GROUPS	18
- THE AUTHORITIES' RESPONSE	19
3. RACIST AND HOMO/TRANSPHOBIC VIOLENCE	22
- TREATMENT OF HOMO/TRANSPHOBIC VIOLENCE IN THE CRIMINAL CODE	22
- DATA AND SCALE OF THE PROBLEM	22
- THE AUTHORITIES' RESPONSE	22
4. INTEGRATION POLICIES	24
- REFUGEES AND OTHER MIGRANTS	24
- HISTORICAL ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES	27
II. TOPICS SPECIFIC TO ARMENIA	28
1. INTERIM FOLLOW-UP RECOMMENDATIONS OF THE FOURTH CYCLE	28
2. POLICIES TO COMBAT DISCRIMINATION AND INTOLERANCE AGAINST LGBT PERSONS	29
- DATA	29
- LEGISLATION	30
- SPECIALISED NATIONAL BODIES	31
- DISCRIMINATION IN VARIOUS FIELDS	31
INTERIM FOLLOW-UP RECOMMENDATIONS	33
LIST OF RECOMMENDATIONS	35
BIBLIOGRAPHY	37
APPENDIX: GOVERNMENT'S VIEWPOINT	41

FOREWORD

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

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

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

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

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

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

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

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 17 March 2016; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fourth report on Armenia on 7 December 2010, progress has been made in a number of areas covered by the report.

Armenia has shown determination in the fight against racism and intolerance. For example, in October 2013, it took the initiative of organising a Conference on "Combating racism, xenophobia and intolerance in Europe", during the Armenian Chairmanship of the Committee of Ministers of the Council of Europe.

As far as legislation is concerned, the Armenian authorities have launched a process to revise the Criminal Code. Attention will be focused on bringing the provisions criminalising hate crimes into line with the terms of ECRI's General Policy Recommendation No. 7.

In addition, the authorities have embarked upon drawing up draft comprehensive anti-discrimination legislation.

Regarding the fight against racism and intolerance, Armenia takes an active part in the Council of Europe's HELP assistance programme. This initiative has helped to improve the ability of justice professionals to respond effectively to racism and racial discrimination issues.

In the field of integration, Armenia has taken measures to integrate a large influx of people from Syria. For example, the authorities have opened an integration centre.

Concerning the ethnic, religious and linguistic minorities historically present in the country, the Armenian authorities have significantly increased their financial support for the ethnic minorities. The Co-ordination Council of Ethnic Minorities has adopted objective criteria and rules of procedure. Financial assistance is granted according to each ethnic minority's real needs. Lastly, the authorities have made considerable effort to increase the capacity of pre-school education facilities and to improve children's readiness for school.

ECRI welcomes these positive developments in Armenia. Nonetheless, despite the progress made, certain points remain matters of concern.

The Armenian authorities have embarked upon significant legislative initiatives. However, the criminal, civil and administrative legislation suffers from numerous shortcomings with the result that it is not possible to combat racism or racial discrimination comprehensively. The courts lack expertise in the application of the international standards which plaintiffs could rely on to rectify the existing legal shortcomings.

In cases of racial discrimination, the lack of any mechanism for sharing the burden of proof makes it difficult to establish evidence. This undermines the Human Rights Defender's ability to gather information on cases of racial discrimination submitted to him.

ECRI notes a rise in hate speech leading to acts of violence. The main targets of this are members of the LGBT community and non-traditional religious groups. This situation is all the more worrying given that there is a high level of under-reporting of racist and homo/transphobic crime and that the effectiveness of the criminal, civil and administrative law provisions dealing with hate crime or discrimination is seriously hampered by the shortcomings in legislation. In addition, political discourse frequently contains statements stigmatising these vulnerable groups, which helps trivialise racist and intolerant attitudes within the population. On this question, ECRI deplores the lack of any condemnation by the authorities or political leaders of the homo/transphobic statements made following the arson attack on a Yerevan gay bar in May 2012.

In the field of integration, ECRI notes that Armenia has not yet adopted a comprehensive integration policy. However, the authorities mentioned that a new proposal will be submitted to the Parliament in September 2016. ECRI further notes

that the equality statistics fail to provide a clear picture of the situation of vulnerable groups with regard to the discrimination of which they are the victims.

Measures to promote the integration of vulnerable groups are not clearly set out. There is no overall planning of their funding (which, moreover, involves numerous external donors) and there are certain gaps. The support and assistance measures for migrants, as they currently stand, do not last long enough to ensure their integration into Armenian society. The priority housing programme adopted for persons forcibly displaced from Azerbaijan has not yet been finalised.

In this report, ECRI calls on the authorities to take additional measures in a number of areas; it makes a series of recommendations, which include the following.

With regard to the criminal-law provisions to combat hate crime, the authorities should bring criminal legislation into line with its General Policy Recommendation No. 7.*

Sexual orientation and gender identity should be added to the list of prohibited grounds. A provision explicitly stipulating that homo/transphobic motivation constitutes an aggravating circumstance for all ordinary offences should be added. With regard to civil and administrative legislation, the authorities should enact a comprehensive anti-discrimination law covering all the grounds of interest to ECRI, in all fields of life.

Concerning the Human Rights Defender, the authorities should either amend the law to enable him to deal with discrimination in the private sector or establish an independent equality authority.

The ability to combat hate crime would be enhanced by establishing an independent mechanism responsible for dealing with all types of complaint against the police.

There should also be a code of media ethics comprising clear provisions against racist and homo/transphobic hate speech. The code of conduct in force in parliament should allow for the punishment of racist and homo/transphobic hate speech made by MPs. The authorities should initiate investigations and prosecutions for all cases of incitement to violence and hatred, or threats against LGBT persons. The Armenian authorities should make a public statement condemning hate speech and homo/transphobic violence.

In the field of integration, the authorities should draw up a national strategy and establish a system to collect equality data and produce equality statistics.

The programmes for the integration of vulnerable groups should comprise a description of their objectives and a complete set of criteria for assessing their impact on these groups. They should also comprise a clear financial plan, identifying actions to be funded by the state budget and actions for which funding must be sought from external donors.*

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

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation to combat racism and racial discrimination¹

1. ECRI has on several occasions examined the various legal provisions applicable in the light of its General Policy Recommendation (hereafter GPR) No. 7 on national legislation to combat racism and racial discrimination and of its GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. The analysis below will deal with the points not yet studied or with continuing shortcomings².

- Criminal law

2. ECRI notes that Article 226 of the Criminal Code refers only to nationality, race, and religion as the characteristics of the victims of racist acts that are classified as criminal offences (hereafter “prohibited grounds”). It remains unclear whether nationality should be understood as citizenship only (and, in this case, if it refers to Armenian citizenship or to any citizenship in general) or if this concept also covers national origin. This list of prohibited grounds does not include colour, language or ethnic origin. It does not refer to sexual orientation and gender identity either (see also §§25-26 and 57).³
3. With regard to paragraph 18 a) of GPR No. 7, ECRI notes that Article 226 criminalises incitement to hatred and threats on the prohibited grounds. No other provisions criminalise public incitement to violence or discrimination. Similarly, there are no specific provisions prohibiting public insults and defamation on the prohibited grounds.⁴ ECRI also notes that Article 226 does not specify whether a grouping of persons can be considered as victims.
4. Article 226 contains other provisions criminalising some of the acts covered by paragraph 18 d), f) and g) of GPR No. 7. In addition to incitement to hatred and threats, it prohibits the commission of this offence through the mass media, by abuse of official position or by an organised group. However ECRI notes the following loopholes: with regard to paragraph 18 d), Article 226-1 is limited to the prohibition of the expression of an ideology which claims the superiority of a grouping of persons on grounds of “race” or which aims to denigrate other people’s national dignity. With regard to paragraph 18 f), the Criminal Code does not specifically criminalise the dissemination, distribution, production, and storage of racist material. With regard to paragraph 18 g), Article 226 does not criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities with the intention of contributing to the offences covered by paragraph 18 a), b), c), d), e) and f) of GPR No. 7.

¹ In accordance with ECRI’s General Policy Recommendation (GPR) No. 7, “racism” is understood to mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. “Racial discrimination” is understood to mean any differential treatment based on these grounds, which has no objective and reasonable justification.

² ECRI notes that major legislative projects are underway, including in areas of interest to ECRI. It refers here to Chapters 4 to 6 of Schedule 1 of the Decree of President of the Republic of Armenia "On Approval of the 2012-2016 Strategic Programme for Legal and Judicial Reforms of the Republic of Armenia" and to the list of measures under the programme No. NK-96-A of 30 June 2012.

³ With regard in particular to the inclusion of sexual orientation and gender identity in the list of prohibited grounds, this initiative is of special relevance in the context of Part II.2 of this report on measures to combat intolerance and discrimination against Lesbian, Gay, Bisexual and Transgender persons (LGBT) insofar as discrimination against LGBT persons is primarily based on grounds of both “sexual orientation” and “gender identity”.

⁴ ECRI understands that the Armenian authorities have removed all generic provisions from their criminal law at the request of various international organisations. However, ECRI considers that specific criminal offences should remain in the Criminal Code if they are committed on racist grounds.

5. Although various articles of the Criminal Code prohibit genocide (Article 393), crimes against humanity (Article 392) and public incitement to aggressive wars (Article 385), there are no criminal law provisions prohibiting the public denial, trivialisation, justification or condoning, with a racist aim, of such crimes and, in particular, war crimes, as recommended by paragraph 18 e) of GPR No. 7.
6. With regard to paragraph 18 h) of GPR No. 7, Article 226 does not contain specific provisions prohibiting racial discrimination in the exercise of one's public office or occupation. Article 143.1 prohibits the breach of the human rights and freedoms of citizens in particular by abusing one's official position (Article 143.2), but, here again, there are no specific provisions, as requested by paragraph 18 h) of GPR No. 7.
7. With regard to paragraph 21 of GPR No. 7, Article 63 stipulates that, for any offence not referred to in relevant specific national-law provisions, a racist motivation shall be considered an aggravating circumstance. However, this article does not cover all the grounds prohibited in GPR No. 7 (see §2).⁵
8. Finally, ECRI is not aware of any criminal provisions covering legal persons' responsibility for any racially-motivated offences criminalised by relevant national-law provisions, as recommended, in paragraph 22 of GPR No. 7.
9. At this stage of its analysis, ECRI would like to mention a current governmental initiative to review the Criminal Code with regard to racism and racial discrimination issues. According to the information it has received so far, this would involve extending the list of prohibited grounds, in particular by including sexual orientation and gender identity among the prohibited grounds for racially-motivated offences; including racist motivation as an aggravating circumstance for all ordinary offences; and criminalising certain other forms of racist conduct. ECRI understands that this revision of the Criminal Code is also aimed at improving the application of the relevant criminal provisions. The draft revised Code should be tabled in 2016. ECRI considers that this legislative initiative offers a unique opportunity to bring Armenian criminal law fully into line with GPR No. 7.
10. ECRI recommends that the authorities bring their criminal law, in general, into line with General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) explicitly include the grounds of colour, language, nationality (understood as citizenship), national or ethnic origin, sexual orientation, and gender identity in the list of "prohibited grounds"; (ii) criminalise incitement to violence and incitement to racial discrimination, and (iii) criminalise the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity and war crimes.

- Civil and administrative law

11. In its 3rd report on Armenia⁶, ECRI again recommended that the authorities draft comprehensive civil and administrative legislation against racial discrimination, drawing on its General Policy Recommendation No. 7. Other bodies, such as the Council of Europe Commissioner for Human Rights⁷ and the European Commission⁸, have made similar recommendations. ECRI notes that a draft anti-

⁵ Several articles of the Criminal Code create additional racism-specific offences, in the sense that they provide for heavier penalties in respect of ordinary offences that have been motivated "by national, racial or religious hatred or religious fanaticism": Article 104-13 murder, Article 112-12 willful inflicting of substantial damage to health, Article 113-7 infliction of willful, medium-gravity damage to health, Article 119-7 torture, Article 185-4 willful destruction or despoliation of property and Article 265-2 treating in an outrageous manner of dead bodies or places of burial.

⁶ ECRI (2011a): §25.

⁷ Council of Europe, Commissioner for Human Rights (2015): §§103 and 114.

⁸ European Commission, High Representative of the European Union for Foreign Affairs and Security Policy (2015): p. 4.

discrimination law has been prepared by the Human Rights Defender, in consultation with national and international experts as well as civil society representatives. However, the draft has not been submitted to the National Assembly, apparently due to the controversy surrounding the 2013 enactment of the Law on Equal Rights and Equal Opportunities for Women and Men (for the hate-speech aspects of the controversy, see §§31 and 37 below). ECRI notes in particular that the draft did not, in the end, include any provisions expressly outlawing discrimination on grounds of sexual orientation or gender identity.⁹ It understands that these provisions had been taken out of the draft, on the ground that such an express prohibition was not necessary; the general provisions contained in the draft were considered sufficient.¹⁰

12. The Armenian authorities have nevertheless recognised the need for an anti-discrimination law.¹¹ Thus, in March 2014 the Government adopted an Action Plan for the implementation of the October 2012 National Strategy on Human Rights Protection. The plan provided for an assessment of whether the relevant Armenian laws were compatible with international law and whether an anti-discrimination law was needed. ECRI understands that this assessment has been carried out, and, in this respect, refers to the recent publication of legal research undertaken by the Eurasia partnership foundation, with support from the Government of the Netherlands.¹² ECRI also understands that the Armenian authorities have started working on a draft law which they say will take account of the various recommendations of its GPR No. 7 and that their aim is to table this draft legislation in 2016. Pending the enactment of a new anti-discrimination law, the relevant observations and recommendations in ECRI's 3rd report remain valid and can be detailed as follows.
13. Article 29 of the Constitution as amended in December 2015 provides that everyone shall be equal before the law and that any discrimination based on any ground such as sex, race, colour, ethnic [...] origin, [...] language, religion or belief, [...] membership of a national minority, [...] or other personal or social circumstances shall be prohibited. ECRI welcomes the fact that this provision clearly prohibits discrimination as recommended in §§2 and 4 of its GPR No. 7. Moreover, the considerable number of administrative and civil law provisions prohibiting discrimination show the authorities' determination to combat discrimination in all areas. They include, for example, Articles 3(3), 114(4)(4) and 180(3) of the Labour Code; Article 6.1 of the Law on Education; Article 4 of the Law on Medical Assistance and Services to the Population; Article 5 of the Law on the Police; Article 22(1)(2) of the Law on Television and Radio; Article 248 of the Administrative Offences Code; and Article 15 of the Judicial Code.¹³ Most of these provisions prohibit discrimination on grounds of race, colour, language, religion, nationality (understood as citizenship) and ethnic origin.¹⁴ However, ECRI understands that the only piece of legislation that contains a definition of direct and indirect discrimination, as recommended in paragraph 4 of its GPR No. 7, is the Law on Equal Rights and Equal Opportunities for Men and Women.¹⁵
14. Armenian law does not explicitly allow for positive measures for disadvantaged groups (§5 of GPR No. 7) and there is no provision outlawing the special forms of

⁹ Amnesty International (2013): p. 11.

¹⁰ European Commission, High Representative of the European Union for Foreign Affairs and Security Policy (2015): p. 2.

¹¹ Council of Europe, Committee of Ministers (2015): §14.

¹² Ghazaryan, A. and Grigoryan, V. (2015).

¹³ Ghazaryan, A. and Grigoryan, V. (2015): p. 11.

¹⁴ Ghazaryan, A. and Grigoryan, V. (2015): p. 12.

¹⁵ See Articles 3 and 6 of the Law on Equal Rights and Equal Opportunities for Men and Women.

discrimination enumerated in §6 of GPR No. 7. No specific provision places public authorities under a duty to positively promote equality and prevent discrimination as recommended in §8 of GPR No. 7. Concerning public procurement, ECRI notes that Armenian law does not stipulate that contractors need to positively promote a policy of non-discrimination on the grounds covered by ECRI's terms of reference (§9 of GPR No. 7).

15. With regard to access to judicial and/or administrative proceedings, ECRI understands that, in practice, most discrimination cases have to be dealt with by the courts, which is not fully in line with paragraph 10 of its GPR No. 7 (see also §§20 and 22 below). With regard to the field of employment in particular, it should be underlined that the Labour Inspectorate has been abolished and that its role of monitoring discrimination in the workplace has not been taken over by any other official bodies. Additionally, there is no special rule on the sharing of the burden of proof in discrimination cases (§11 of GPR No. 7).
16. There is no mechanism for reviewing conformity with the prohibition of discrimination of laws, regulations and administrative provisions (§13 of GPR No. 7). Similarly, there are no specific provisions imposing an obligation to amend or declare null and void any discriminatory provisions included in contracts, agreements, or internal rules and regulations (§14 of GPR No. 7), to suppress the public financing of organisations that promote racism (§16 of GPR No. 7) or to disband racist organisations (§17 of GPR No. 7).
17. ECRI again recommends that the Armenian authorities adopt comprehensive civil and administrative legislation against discrimination - which should also cover the grounds of interest to ECRI - in all key fields of life. In this connection, it refers to its General Policy Recommendation No. 7.

- **Specialised national bodies¹⁶**

18. ECRI notes that the only body that can act as a specialised body in Armenia is the Human Rights Defender (hereafter "the Defender"), established by the 2003 Law on the Human Rights Defender (hereafter "HRDL"). However, the Defender is responsible only for protecting individuals from breaches of their human rights and fundamental freedoms by public authorities (Article 2 HRDL). This means that the Defender cannot deal with discrimination cases concerning the private sector.¹⁷
19. Notwithstanding this limitation, ECRI notes that the Defender has received A-status from the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), meaning that the institution is in full compliance with the Paris Principles. Moreover, in line with Principle 3 of ECRI's GPR No. 2, the Defender may receive complaints from individuals (Article 7 HRDL) and legal entities (Article 8.1 HRDL). He/she may carry out investigations and request information from the authorities and their representatives (Article 12 HRDL).
20. However, there are no provisions on the sharing of the burden of proof in discrimination cases. As a result, public bodies can be evasive in their replies to such complaints and victims of discrimination are reluctant to appeal to the Defender. ECRI notes, for example, that in 2014 the Defender did not deal with any complaints concerning racial discrimination.

¹⁶ Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

¹⁷ The Armenian authorities have informed ECRI that Article 210-2 of the Constitution amended in December 2015 provides that the Defender is also responsible for examining the same violations committed by "organisations". The Decree of the President of Armenia No. NH-170-A of February 2016, provides that the Law on the Defender of Human Rights be amended accordingly.

21. The Defender may also require public authorities to remedy violations (Article 15.1 HRDL), refer cases to the courts (Article 15.1 §4 HRDL), propose disciplinary measures (Article 15.5 HRDL) and express general views and recommendations concerning the protection of human rights (Article 7.3 HRDL).
22. However, the HRLD does not contain any provisions expressly giving the Defender the power to verify the conformity of legislation with the principle of equality (as per paragraphs 24 and 53 of GPR No. 7). Moreover, it stipulates that the Defender cannot intervene in judicial proceedings (Article 7.1 HRDL), which means that the Defender cannot represent complainants before the courts (as per paragraph 51 of GPR No. 7). Finally, the Defender is barred from continuing the examination of a complaint that is referred to a court (Article 10.1 HRDL).
23. ECRI recommends that the law provides for shared burden of proof in discrimination cases. In addition, ECRI recommends that the authorities amend the Law on the Human Rights Defender to give him/her the power to examine complaints concerning discrimination, also on grounds of interest to ECRI, in the private sector. Alternatively, the authorities should establish an independent equality authority dealing inter alia with the discrimination grounds that are of interest to ECRI, as recommended in General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

2. Hate speech¹⁸

24. In its 3rd report,¹⁹ ECRI noted that in Armenia there was no overt hostility vis-à-vis ethnic minorities or non-nationals, including those who are not ethnic Armenians. It also noted that there was no evidence of anti-Muslim sentiment. During its contact visit to Armenia, ECRI's delegation met with various organisations representing ethnic minorities, which confirmed that the latter were not targeted by racist hate speech. ECRI's concerns focus mainly on hate speech experienced by people belonging to the LGBT community or to non-traditional religious groups.

- Treatment of homo/transphobic speech in the Criminal Code

25. ECRI notes that Article 226 of the Criminal Code, which outlaws public incitement to hatred, does not mention sexual orientation or gender identity^{20 21} among its prohibited grounds. Furthermore, as indicated above (see §2), the Criminal Code does not contain any provisions stipulating that homo/transphobic motivation constitutes an aggravating circumstance for any ordinary offence. As stated above (see §9), the Ministry of Justice is in the process of drafting amendments to the Criminal Code, which might include sexual orientation and gender identity in the list of prohibited grounds; they might also add to the Criminal Code a provision stipulating that homo/transphobic motivation constitutes an aggravating circumstance for any ordinary offence. ECRI believes that these additions are essential to ensure an appropriate level of protection for LGBT persons.

¹⁸ This section deals with racist and homo/transphobic speech. For a definition of "hate speech", please refer to Recommendation R (97) 20 of the Committee of Ministers to member states on hate speech, adopted on 30 October 1997.

¹⁹ ECRI (2011a): §§43-44.

²⁰ "Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender." Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.

²¹ "Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms." Ibid.

26. ECRI recommends that sexual orientation and gender identity be expressly added to the prohibited grounds in Article 226 of the Criminal Code and that a provision be added to that Code explicitly stipulating that homo/transphobic motivation constitutes an aggravating circumstance for any ordinary offence.

- **Data**

27. ECRI takes note of information provided by the Armenian authorities according to which three offences of public incitement to hatred have been investigated since 2011 by the investigation department of the Armenian National Security Service under Article 226 of the Criminal Code. Only one out of these three cases led to a conviction (see §41). ECRI also understands that these cases were dealt with by the Armenian National Security Service *ex officio*, and that no complaints from private persons falling under Article 226 were received over this period.

28. The information shows that there were cases dealt with by the authorities in recent years. ECRI therefore wonders why Armenia has no longer provided data to the ODIHR for its report “Hate Crime in the OSCE Region: Incidents and Responses”²². Moreover, ECRI is concerned about the contrast between the small number of criminal proceedings and the possible extent of the phenomenon, such as highlighted in the following paragraphs.

- **Hate Speech in political discourse**

29. ECRI notes a worrying level of intolerant statements against people belonging to the LGBT community, in particular by political leaders. Following an arson attack on the DIY club, a gay-friendly bar in Yerevan, that took place on 8 May 2012 (see §59), Eduard Sharmazanov, spokesperson of Armenia’s ruling Republican Party and Parliament’s Deputy Speaker, publicly stated that this attack was “completely right and justified” and that those who support the rights of LGBT Armenians “are perverting our society and defaming the Armenian national identity.” Another member of parliament (MP), Artsvik Minasyan, stated that the young men who attacked the bar “acted in accordance with our society’s values and national ideology, and in an appropriate manner.” He further called for a fight against the “spreading of homosexuality” as a “threat to national security”. The Chief of Staff of the Public Council of the Republic of Armenia, a consultative body of the Armenian President, created a Facebook page, “in support of fire bombers of DIY club”, calling for a halt to the prosecution of the attackers.²³

30. More recent incidents can be cited. Following the publication in an Armenian newspaper in May 2014 of an anti-gay black list of people, a ruling political party MP Hayk Babukhanyan publicly supported the article; he also appeared as a witness for the newspaper in related court proceedings²⁴. And, in April 2015 MP Naira Zohrabyan publicly announced she had always voted against any proposal for the protection of LGBT rights introduced in the Parliamentary Assembly of the Council of Europe (PACE). She particularly mentioned, “I will do anything possible in order to prohibit the spread of metastases in Armenia. I say this openly and publicly.”²⁵

- **Racism in other forms of public discourse**

31. ECRI finds a similar trend in other forms of public discourse. ECRI notes intolerant statements against Azerbaijanis²⁶, as demonstrated by the incident that

²² See CERD (2011).

²³ Source: Amnesty International (2013).

²⁴ See PINK Armenia (2014) and Caucasus Equality News Network (2014).

²⁵ Source: Helsinki Citizens’ Assembly (2015).

²⁶ <https://www.hrw.org/news/2012/04/17/armenia-investigate-mob-attack-local-ngo;>
[https://www.amnesty.org/en/documents/eur54/001/2012/en/.](https://www.amnesty.org/en/documents/eur54/001/2012/en/)

has related to an Azerbaijani film screening.²⁷ In addition, some public surveys, which were furnished to the delegation subsequent to the visit, suggest a considerable level of prejudices towards Jews.²⁸ Also, in 2012, the adoption of draft legislation on the equal rights and equal opportunities for men and women (see §11) triggered a three-month long debate within Armenian society. The draft law included references to the expression “gender equality”, which religious and conservative leaders portrayed as anti-Armenian, untraditional, and generally perverted or sinful.

32. This hostility towards LGBT people is also illustrated by the reactions to public events organised by LGBT groups and other human rights organisations. For example, in May 2012, a Diversity March was organised by PINK Armenia and the Women’s Resource Centre to mark the UN World Day for Cultural Diversity. A group of counter-demonstrators dubbed the march a “gay pride” and attacked the participants while chanting nationalistic songs and slogans referring to gay people as a disease and a threat to children.²⁹ Another example is the protests which, in November 2012, led to cancellations of the screening of the film “Parada”, a film about tolerance and related to the non-discrimination of LGBT persons. Several venues abruptly cancelled the screening of the film. Protests were staged in Yerevan against the screening of the film in a puppet theatre.^{30 31}
33. ECRI has also noted recurrent instances of hate speech against (members of) non-traditional religious groups. On 9 September 2013, in a widely covered press conference, Armenian Apostolic Church clergy member Komitas Hovnanyan, together with the head of an organisation called United Youth League, criticised religious minorities. According to K. Hovnanyan, there were more than 215 “sects” in the country, which received millions of dollars from abroad and aimed to destroy Armenia.³² On 20 September 2013, the United Youth League and “Menk” (We) initiated a campaign to collect signatures calling for a government investigation into the activities of all registered and unregistered religious organisations and for a ban on their “destructive” influence on Armenian society. The groups called for the government immediately to stop the activities of what they referred to as the Word of Life, Jehovah’s Witnesses, Reima, Altar, and Great Grace “sects”.³³ In September of the same year, a high-ranking member of the Apostolic Church made statements stigmatising religious minorities and two youth organisations circulated online petitions accusing “cults” of conspiring against Armenia and receiving foreign money and calling on the government to investigate and close such “cults” down. This led to attempted assaults on a pastor of the Evangelical Church and his secretary (see §58). In October 2013, the United Youth League published a list of pop artists, claiming that they were “sectarians.” Few of the above-mentioned artists defended their views or their right to privacy. Most of the artists publicly denounced “sects” and tried to prove that they were members of the Armenian Apostolic Church.³⁴
34. More recently, in April 2015, Sevan Aghajanyan, the president of the NGO National Value Preservation Fund, and Robert Aharonyan, the head of the Armenian Social Movement, made public statements against Jehovah’s Witnesses. They presented them as a serious threat to Armenia’s national

²⁷ http://www.rferl.mobi/a/azerbaijan_armenia_film_festival_canceled_protests/24547207.html.

²⁸ See inter alia ADL Global Survey showing that 58% of respondents have antisemitic stereotypes <http://global100.adl.org/#country/armenia/2014>.

²⁹ ILGA-Europe (2013).

³⁰ Armenia Now (2012).

³¹ European Union (2012).

³² US Department of State (2014a): p. 6.

³³ Ibidem.

³⁴ Ibidem.

security and complained that the police did not take any measures to restrict the “sect’s” activities. These statements followed a number of public calls aimed at preventing Jehovah’s Witnesses from presenting their religious publications on portable stands in streets. In February 2015, Robert Aharonyan even went so far as to remove such stands and books forcibly.

- **Racism on the Internet and in the traditional media**

35. ECRI notes a very low level of xenophobia against ethnic minorities in Armenia in traditional media. However, several instances of intolerant statements have been found there, targeting people belonging to the LGBT community or to non-traditional religious groups (see §24).
36. Regarding xenophobia, a recent research report³⁵ on how nationalism is reflected in particular in the Armenian online media showed that none of the ten most popular online media analysed was engaged in the active promotion of intolerance and none of them propagated the views of nationalist groups. Only a few examples of hate speech were found in the Armenian online media. These results are corroborated by a more recent study monitoring nine Armenian media outlets.³⁶
37. As regards homo/transphobic hate speech, ECRI notes that the debate in connection with the adoption in 2012 of a draft law on the equal rights and equal opportunities for men and women was quickly taken up in the media (see §31). The word “gender” was presented as synonymous for transgender, homosexuality and perversion, while proponents of the rights of women and LGBT people were portrayed as “national traitors”, “destroyers of families” and a “threat to Armenian values”. Another particularly worrying case of anti-LGBT hate speech in the media has already been referred to: in 2014, an Armenian newspaper called “Iravunk” published an anti-gay black list of people, with direct incitement to discrimination and intolerance towards them.
38. With regard to non-traditional religious groups, ECRI understands that the media have published a significant number of reports stigmatising minority religious groups as “sects” and propagated fear of religious minorities. Various television stations broadcasted discussions and news coverage presenting minority religious groups as enemies of the state, without providing minority religious groups with the opportunity of responding or participating in the debate. Several articles were published in newspapers, portraying religious minorities as criminals and spies; while these did not refer to particular religious groups, their combined result was an atmosphere of intolerance towards all religious minorities. Religious groups also reported increased intolerance and threats on social networks.³⁷ An incident involving a Jehovah’s Witness illustrates these tendencies: on 10 November 2010, several media outlets, including the Armenian Public Television, reported that a young man belonging to the Jehovah’s Witnesses community had been charged with the murder of his parents. In addition to containing derogatory and insulting comments about Jehovah’s Witnesses, one of the broadcasts suggested that viewers should resort to physical violence against them.

- **Extremist groups**

39. In its 3rd report, ECRI noted cases of antisemitic statements made by the leader of an “Aryan” party. According to the Armenian authorities, this party no longer exists. However, ECRI recalls that in 2011 CERD issued a recommendation requesting the authorities to take action to outlaw any organisation inciting racial

³⁵ Mikaelian, H. (2011).

³⁶ Committee to protect freedom of expression (2014).

³⁷ US Department of State (2014a): pp.5- 6.

discrimination³⁸, with which ECRI naturally agrees. In its 3rd report³⁹, ECRI recommended that the authorities look into the conditions under which this Aryan party operates and that they consider whether further action is required. ECRI is surprised that no measures have been taken in this respect.

- **The authorities' response**

40. ECRI considers hate speech particularly worrying because it is a first step in the process towards actual violence, as demonstrated by several violent incidents against people belonging to non-traditional religious groups (see §58) and to the LGBT community (see §59). Appropriate responses to hate speech include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as self-regulation, prevention and counter speech.
41. In terms of the criminal law response, ECRI observes that only three cases have been dealt with by the courts. The first case concerns antisemitic comments on Facebook. Preliminary investigations started in April 2011, but in December of the same year, the proceedings were suspended because it had not been possible to identify the perpetrator. The second case concerned the publication on various websites of documents publically threatening or inciting to violence against people from Nagorno-Karabakh, Georgians, and Russians (as well as against the former and current Presidents of the Republic). Preliminary investigations began in September 2013. In October of the same year, the proceedings were again suspended because it was impossible to identify the perpetrator. The third case concerned the sale of photo albums and various other publications about alleged Armenian propaganda and terrorist acts against Turkey and Azerbaijan; these allegedly amounted to incitement to racial and religious hatred. A suspect was arrested in April 2011. In April 2012, he was sentenced to four years' imprisonment, but the Criminal Court of Appeal reversed this judgment. In July 2012, the General Prosecutor appealed against this decision, but ECRI understands that no date has yet been fixed for the hearing.
42. ECRI attributes the small number of cases investigated and/or prosecuted to several factors. As pointed out in the first section of this report, there are various gaps in the provisions criminalising public incitement to hatred that prevent the authorities from providing an effective criminal-law response to racist and homo/transphobic hate speech cases. ECRI refers, in this connection, to various recommendations it has already made (see §10 and §26). Moreover, ECRI has reasons to doubt that existing criminal-law provisions are effectively applied. In this respect, ECRI notes that no criminal proceedings have been instituted for hate speech in any of above-mentioned cases involving homo/transphobic statements by politicians (see §§29-30).
43. ECRI considers that various initiatives can be taken to improve the effective application of existing criminal-law provisions. To achieve this, some measures are needed to boost victims' confidence in the justice system. ECRI understands that NGOs providing support to victims of homo/transphobic hate speech are reluctant to encourage them to submit complaints to the police. This is related to allegations of misconduct by law enforcement officers. Different claims have been made, one of them being that the police have reacted to hate speech complaints by bringing charges against the plaintiffs, in particular when the latter are sex workers. ECRI therefore considers (as it has done in all its previous reports on Armenia⁴⁰) that the authorities should set up an independent mechanism for dealing with complaints against the police. The authorities have reminded ECRI

³⁸ CERD (2011): §14.

³⁹ ECRI (2011a): §56.

⁴⁰ ECRI (2003a): §55, ECRI (2007a): §97 and ECRI (2011a): §134.

that the Special Investigation Service is responsible for dealing with criminal complaints; however, ECRI recalls that an independent mechanism is needed that would deal with all manner of complaints including those that do not involve criminal charges.

44. ECRI again recommends that an independent mechanism be set up to deal with all types of complaints against the police.
45. In addition and in order to improve the application of existing criminal-law provisions against hate speech, ECRI recommended, in its 2nd and 3rd reports⁴¹, that members of the judiciary, law-enforcement authorities and lawyers should receive training on domestic and international norms against racism, racial discrimination and intolerance. According to the authorities, there are training courses for members of the judiciary, law enforcement authorities and lawyers. While these courses are about human rights in general, there is a thematic focus on combating racism and intolerance. They are an integral part of initial training at the Police Academy and the Judicial Academy. In-service training is also given to police officers and judges on a broad range of topical issues, including on issues of concern to ECRI. It should be also underlined that Armenia is involved in the Council of Europe assistance programme “Human Rights Education for Legal Professionals” (HELP).^{42 43} ECRI understands that these training initiatives have helped to raise legal professionals’ awareness of racism and racial discrimination issues and improved their ability to respond effectively thereto. It therefore invites the Armenian authorities to step up their efforts in this area. ECRI also welcomes the recent decisions of the Justice Academy No. 54A and 55A in February 2016 in this context.
46. Training will also help the judicial authorities to deal with hate speech cases in the fields of civil and administrative law. ECRI is fully aware that very few such complaints have been lodged. As indicated in this report’s section on national legislation to combat racism and racial discrimination, there are many gaps that compromise the ability of the civil- and administrative-law system to provide effective responses to hate speech. The authorities have explained that international treaties can be invoked by plaintiffs and applied directly by the courts. However, the authorities have also confirmed that there have been no such cases. ECRI understands that victims are not aware of existing remedies and, as a result, they are reluctant to lodge complaints. At the same time, ECRI understands that the courts lack expertise in this area.
47. As a result, ECRI finds it surprising that the authorities claim that existing civil- and administrative-law provisions provide a solid basis for addressing cases of racism and/or racial discrimination occurring, for instance, in the media. In this respect ECRI had recommended in its 3rd report⁴⁴ that the authorities promote, without encroaching on the independence of the media, the speedy adoption of a new self-regulatory Code of Ethics with clear provisions against racism and intolerance. It had also recommended that training be organised for those responsible within the State TV and Radio Commission for the application of Article 24 of the Law on TV and Radio on how to balance freedom of expression with the protection of minorities. ECRI has not been informed of any initiatives taken by the authorities in this respect.
48. ECRI stresses that the courts cannot act as a substitute for effective self-regulatory bodies; this is amply demonstrated by a case involving false and

⁴¹ ECRI (2007a): §§34 and 96, and ECRI (2011a): §37.

⁴² See <http://helpcoe.org/> and <http://helpcoe.org/news/certificates-award-ceremony-armenia-course-introduction-echr>.

⁴³ For a complete list of such training initiatives, see Republic of Armenia (2016): §32 and §82.

⁴⁴ ECRI (2011a): §50.

derogatory statements made on Armenian public television against Jehovah's Witnesses (see §38). On 12 November 2010, the Human Rights Defender of the Republic of Armenia called on the mass media to cease their accusations against Jehovah's Witnesses. As the TV station in question refused to take corrective measures, the Jehovah's Witnesses felt obliged to file a civil claim in the courts asking them to order the defendants to apologise for their defamatory statements, issue a full retraction and publish an unedited response from the Jehovah's Witnesses. The TV station ended up proposing a settlement, which the Jehovah's Witnesses accepted and withdrew their claim.

49. ECRI again recommends that the authorities work in close co-operation with the media, without encroaching on their independence, in order to adopt a code of media ethics with clear provisions against racist and homo/transphobic hate speech, to promote adherence to it by the entire industry, and to organise appropriate training sessions for media professionals.
50. Another issue calling for self-regulation is intolerant statements made by MPs, in particular against the LGBT community (see §§29-30). ECRI understands that although there is an ethics mechanism for MPs, this cannot be used to discipline MPs who have engaged in racist or homo/transphobic hate speech.
51. ECRI recommends that a code of conduct be introduced as soon as possible in Parliament sanctioning, inter alia, racist and homo/transphobic discourse.
52. Self-regulation could provide an effective response to such incidents. Disavowal should be seen as a complementary response. ECRI recalls in this connection that in June 2012, it issued a statement⁴⁵ condemning homophobic comments made by leading political figures following the arson attack on a gay-friendly bar in Yerevan (see §12 and §59). It called [...] on all Armenian political parties to distance themselves from such extreme forms of expression. ECRI regrets the absence of any strong public condemnation of such statements, by the authorities or political leaders.⁴⁶ Generally speaking, ECRI is concerned by the overall lack of reaction to hate speech, which the general public could interpret as trivialising the stigmatisation of these vulnerable groups⁴⁷, and in particular the LGBT community. The recent events of October 2015 show that lack of reaction can have serious consequences; they confirm the need for urgent action in this respect. The reluctance to defend the rights of LGBT persons might be linked to fear of appearing to advocate same-sex marriage (see §31 and §37), which some consider to be a taboo for Armenian society. However, the issues are distinct.
53. ECRI is also concerned that hate speech against members of the LGBT community could be fuelled by recent legislative initiatives. It recalls in this connection that, in August 2013, the Armenian police made a proposal to have the Code of Administrative Offences amended to ban "propaganda of non-traditional sexual relations". The relevant draft legislation has been submitted to Parliament. ECRI understands that it has now been withdrawn.
54. ECRI recommends that all cases of public incitement to violence and hatred, threats against LGBT people on grounds of their alleged sexual orientation and/or gender identity, or against human rights defenders promoting their rights, be investigated and prosecuted accordingly.

⁴⁵ ECRI (2012a).

⁴⁶ ECRI notes that, regarding the homo/transphobic articles published in newspapers (see §37), Iravunk's editor-in-chief Hovhannes Galajyan received a special "Medal of Appreciation" from President Serzh Sargsyan for his contribution to the creation of this newspaper, its continuing commitment and successful work (see <http://www.president.am/hy/decrees/item/1556/>).

⁴⁷ YPC (2012): p.30. "Regarding the domestic practice outside the courts, the situation is very worrisome, since speech of defamatory and insulting nature towards religious minorities, as well as speech that shows hatred are openly encouraged by state bodies and higher state officials, as well as representatives of the Armenian Apostolic Church".

55. ECRI recommends that the Armenian authorities make a public declaration condemning homo/transphobic hate speech and violence. It also recommends that all political parties take a firm stand against homo/transphobic discourse – especially when it is their members engaging therein.

56. ECRI considers that the authorities need to demonstrate their firm commitment and determination to address the hate speech issue. ECRI welcomes certain high-level initiatives taken by the Government in this connection, such as the conference on Combatting Racism, Xenophobia and Intolerance in Europe which was held in Yerevan on 21-22 October 2013, during the Armenian Chairmanship of the Committee of Ministers of the Council of Europe.

3. Racist and homo/transphobic violence

- Treatment of homo/transphobic violence in the Criminal Code

57. The criminal law provisions concerning violence are the same as those dealing with incitement to hatred. ECRI's comments and recommendations in §§25 and 26 above, therefore, also apply to homo/transphobic violence.

- Data and scale of the problem

58. ECRI takes note of the information forwarded to it by the Armenian authorities, according to which several cases of racist violence have been investigated since 2011. Most of these cases were about attacks on members of the Yerevan Evangelical Church and its leader. Thus, on 11 September 2013, Pastor Levon Bardakjian of the Yerevan Evangelical Church reported three physical attacks perpetrated by a young man looking for him who entered the church carrying a knife. On 13 September 2013, three unidentified young men tried to kidnap Pastor Bardakjian's secretary. On 18 September 2013, shots were allegedly fired at a car driven by two members of the Church near the town of Sevan.

59. The authorities have reported only one homo/transphobic criminal case, which is linked to the arson attack on the gay-friendly DIY club in Yerevan, which took place on 8 May 2012 (see §29). ECRI considers these figures rather surprising and notes that the picture portrayed by NGOs is quite different. Thus, in 2011, PINK Armenia reported two physical assaults and one attack on transgender people. In 2012, the Open Society Foundation and PINK Armenia reported two physical assaults, one by a group and one against several transgender people, as well as a further attack by a group against participants in a LGBT demonstration. In 2013, PINK Armenia reported one physical assault resulting in serious injury, in which shots were fired at two transgender women, and one physical assault against a gay man carried out by a group.

- The authorities' response

60. In its 3rd report⁴⁸, ECRI recommended that criminal law be effectively applied to all cases of racist violence and incitement thereto. ECRI notes that the police has launched investigations into all the cases relating to the Yerevan Evangelical Church. In two of them, the proceedings were suspended as the perpetrators could not be identified. In the third, the perpetrator was identified, but the court decided to exempt him from criminal liability following his psychiatric examination. Instead of convicting him, the court decided to order psychiatric treatment. Criminal proceedings were also instituted in the case of the arson attack against the gay-friendly bar. However, ECRI understands that sexual orientation and gender identity were never mentioned as possible grounds for the criminal offence in the investigation carried out by the police and the court proceedings. The authorities confirmed that these grounds were not invoked by the victims and were not considered by the prosecution authorities to be bias motivations of the

⁴⁸ ECRI (2011a): §63.

perpetrators. ECRI understands that the perpetrators were sentenced to prison, but this sentence was amnestied following a decision of the Criminal Court of Appeal of the Republic of Armenia on 23 October 2013, based on the application of a Decision on amnesty adopted by the National Assembly on 3 October 2013 on the occasion of the 22nd anniversary of independence of the Republic of Armenia.

61. ECRI is concerned about the discrepancy between the number of cases of anti-LGBT violence reported by the authorities and the number of such cases reported by NGOs (see §29). It believes that the low number of cases is the result of significant under-reporting by victims of hate crime, in particular crime committed on grounds of gender identity or sexual orientation. ECRI notes that several NGOs have indicated that they were extremely cautious in advising potential victims to submit complaints to the police. In its 2014 annual report, PINK Armenia mentioned cases where the police initiated criminal proceedings for false crime reporting against complainants on grounds of their alleged sexual orientation or gender identity.⁴⁹ This is obviously linked to the allegations regarding the effectiveness of the investigations conducted by the police as well as to the lack of protection offered to the victims.⁵⁰
62. There is an obvious parallel with the way hate speech has been responded to by the investigating, prosecuting and judicial authorities. ECRI, therefore, refers to the recommendation made above on improving the relevant criminal law provisions and setting up an independent mechanism for complaints against the police (see §10 and §44).
63. ECRI is particularly concerned by what seems to be an obvious connection between, on the one hand, the lack of political will/commitment on the part of the authorities to fight racist and homo/transphobic hate speech and investigate/prosecute racist and homo/transphobic criminal offences and, on the other, a climate of impunity leading to growing hostility and violence towards persons belonging to the LGBT community or non-traditional religious groups.⁵¹ ECRI notes, for example, following the attack on the gay-friendly club (see §29 and §59), its owner faced homo/transphobic intimidation, threats, aggression and harassment. Some weeks later, she left Armenia for Sweden where she formally applied for asylum. ECRI understands that she has filed applications with the European Court of Human Rights.⁵² ECRI also notes that, according to a recent survey, discrimination based on sexual orientation or gender identity and lack of human rights protection were the main reasons why numerous LGBT persons decided to leave Armenia.⁵³ ECRI therefore considers that the authorities should take urgent action to provide the LGBT community with proper protection and refers in this respect to its previous recommendation in §54.
64. ECRI again strongly recommends that criminal law is effectively applied to all cases of racist violence and incitement thereto -, including homo/transphobic incidents – in particular by focusing on respect of the law by law enforcement officers. Moreover, the authorities should make the alleged racist and/or homo/transphobic motivation an integral part of the investigation into violent incidents from its very beginning and of any judicial proceedings that result therefrom.

⁴⁹ PINK Armenia (2014): p.6

⁵⁰ US Department of State (2014a): p. 6.

⁵¹ European Commission (2015): p. 8.

⁵² See Interights.

⁵³ PINK Armenia and Socioscope (2015b): p. 16.

4. Integration policies

65. In Armenia, two groups of persons can be identified as being in need of integration policies: on the one hand, refugees and other migrants and, on the other, ethnic, linguistic and religious minorities historically present in the country.

- Refugees and other migrants

66. In the past few decades, Armenia has had to constantly deal with large numbers of immigrants, mainly composed of ethnic Armenians, as a result of the Nagorno-Karabach conflict, the situation in Iraq and, more recently, in Syria. ECRI understands that, as a result, Armenian policies have focused mainly on the integration of forcibly deported persons and the integration of non-nationals of Armenian origin.

67. Several laws have been adopted or amended in this respect, such as the law on refugees, the law on legal and socio-economic guarantees for refugees, the law on legal and socio-economic guarantees for persons forcibly displaced from Azerbaijan, and the law on citizenship. In addition to enacting legislation, the authorities have adopted various programmes, such as a “concept of the state regulation of migration policy in the Republic of Armenia” (adopted in 2010), an “Action programme for implementation of the Policy concept for the state regulation of migration in the Republic of Armenia for 2012-2016” (adopted in 2011), a “National strategy on human rights protection” (adopted in 2012) and an “Action plan for the national strategy on human rights protection” (adopted in 2014).⁵⁴ This last document contains measures for the integration of refugees and long-term migrants. Its paragraph 83 refers to draft legislation creating preconditions for the development of a policy on the integration of refugees and long term migrants, which should be submitted in 2016. Finally, in 2015, a draft “integration policy concept for persons recognised as refugees and who received asylum as well as long-term migrants in the Republic of Armenia” was prepared. The draft includes a number of targeted measures such as Armenian language and civic orientation, and temporary housing solutions. The concept also includes measures to ensure that existing services are more accessible for these people.

68. There are currently neither comprehensive integration policies in Armenia, nor practical measures for facilitating migrants’ integration in a structured way.⁵⁵ The authorities have adopted targeted measures, for instance for people fleeing Azerbaijan in 1988-1992 or, more recently, for all asylum-seekers from Syria. For instance, in May 2004 the Government approved a priority housing programme focusing on persons forcibly displaced from Azerbaijan. More recently, for people fleeing Syria, the authorities have adopted various measures covering accelerated refugee status determination procedures and access to refugee status, facilitated naturalisation, simplified granting of short or longer term residence permits, as well as other measures (including exemption or reduction in various taxes and fees) for their prompt administrative integration. In 2014, the State Migration Service opened an “Integration Centre” to accommodate up to 29 persons. ECRI understands that these programmes are mostly funded by external donors, including intergovernmental organisations such as UNHCR. The Armenian authorities have drawn ECRI’s attention to the fact that the economic situation does not allow them to free up resources to fund comprehensive integration policies. However, ECRI noted that various Ministries have actually

⁵⁴ The national strategy on human rights protection and the associated action plan deal with a broad range of human rights-related issues. With regards to ECRI’s concerns, they contain sections specifically dealing, inter alia, with the fight against racial discrimination, integration of refugees and other migrants and preservation of the identity, culture and language of ethnic, linguistic and religious minorities historically present in the country.

⁵⁵ See Temesvári, M. and Kokkinaki, C.V. (2013).

earmarked funds to support some of the initiatives described above, either directly or through grants to NGOs taking such action.

69. With regard to asylum seekers, a "reception centre" for their temporary accommodation operates under the State Migration Service of the Ministry of Administration and Territorial Development of the Republic of Armenia. Asylum seekers and their families are placed there until a final decision on their asylum application is taken. The Centre's activities and services are fully financed by the state budget. ECRI notes that they are also granted specific support and assistance, mainly provided by UNHCR, and covering among other things psychological support, rent subsidy assistance, language classes, and vocational and business training. However, these asylum seekers are no longer eligible for such assistance and support schemes once they receive refugee status or Armenian citizenship. ECRI notes that the "concept of state regulation of migration in the Republic of Armenia" imply that such support should be granted for the period of time really needed to ensure their self-sustainability within Armenian society. ECRI considers that progress in this regard could result from the adoption of the above-mentioned integration policy concept for persons recognised as refugees and who received asylum as well as long-term migrants in the Republic of Armenia and that this problem would be solved through implementing its recommendation on integration policy planning (see below §§78-79).
70. Regarding the "Integration Centre", ECRI observes that this facility has been de facto earmarked for Syrian Armenians who do not have relatives in Armenia and who are subsequently in pressing need of social integration-related support. ECRI's delegation noted that several rooms in this Centre were unoccupied.
71. ECRI recommends that a proportion of rooms in the State Migration Service "Integration Centre" be allocated to refugees who are not from Syria or are not of Armenian ethnic background.
72. According to existing laws, citizens, dual citizens, refugees, stateless persons and foreigners are in general treated equally with regards to policies concerning access to housing, employment, education, welfare and health care. ECRI also understands that asylum seekers and refugees have the right to seek employment under the same conditions as citizens (unless the law provides otherwise), and that there are also no general prohibitions on starting up a business as any Armenian citizen would.
73. With regard to the priority housing programme adopted for persons forcibly displaced from Azerbaijan, ECRI notes that, during the years 2005-2008, 718 families became owners of apartments. Since 2009, no funds have been allocated from the state budget for that purpose. Despite the lack of funds, ECRI notes that the authorities, in 2015, resolved the situation for 21 families, but the case of 903 families still considered as beneficiaries of the programme remains unsolved. According to the Armenian authorities, 9,5 billion AMD would be required to finalise this programme.⁵⁶ Once again, ECRI understands that this problem would be addressed by implementing its recommendations on integration policy planning (see below §§78-79).
74. ECRI has noticed that these measures, which were adopted with a view to easing the integration of people fleeing Syria, have fuelled growing resentment among migrants who are not of ethnic Armenian background, and who consider these measures discriminatory. ECRI notes that, according to the figures provided by the State Migration Service⁵⁷, it can be understood that, for asylum seekers who are of non-Armenian ethnic background, the recognition rate is lower, and the

⁵⁶ Republic of Armenia (2016), §13.

⁵⁷ See http://smsmta.am/?menu_id=145.

number of pending procedures higher. UNHCR has informed ECRI's delegation that they carried out research in this respect, that they brought the authorities' attention to this issue and that they made several recommendations in this respect. ECRI invites the Armenian authorities to take these recommendations into account. In this regard, it welcomes the recent initiatives of the Academy of Justice to set up courses on the protection of the rights of refugees and application of standards on the status of refugees, as well as the cooperation agreement it signed with the UNHCR in March 2016.

75. In general, ECRI considers that the existing elements of integration policies and programmes described above place too much focus on people of ethnic Armenian origin and on the agreed principle that their ethnic background makes integration efforts pointless. This is particularly the case for language policies. According to a Migrant Integration Policy Index (MIPEX) assessment published in 2013, migrants made up 10.5% of the population of Armenia, composed mostly of labour migrants from CIS countries.⁵⁸ The results of the 2011 census show that, for Armenian citizens, Russian is the most commonly used second language.⁵⁹ However, Syrian-Armenians, for instance, speak Western Armenian, one of two variants of the modern Armenian, and Arabic rather than Russian as a second language.⁶⁰ Several NGOs and other International Organisations have drawn ECRI's delegation's attention to cases of possible discrimination in the private sector. For instance, landlords have been reported as charging higher rents for Syrian refugees, and undue linguistic requirements have been found in job adverts. In absence of equality data and statistics, of comprehensive anti-discrimination legislation and of effective recourse mechanisms, it is difficult to assess the extent of this phenomenon.
76. In this respect, ECRI notes that the documents on migration and human rights protection described above (see §67) do contain indicators for assessing the overall efficiency of the implementation of these programmes. However, they do not provide indicators that could be used to monitor the actual impact of these programmes on the situation of the various vulnerable groups of concern to ECRI.⁶¹ Similarly, ECRI notes that Armenia neither collects data nor produces statistics on equality in a general and systematic way.^{62 63}
77. In a context where there is no system in place for collecting data and producing statistics on equality, where there are no clear indicators for evaluating the impact of integration-related programmes on migrants and refugees, and where the Armenian authorities have to extensively rely on external resources to fund such programmes as well as on co-operation with various implementing bodies, ECRI considers that there is an urgent need to prioritise resource mobilisation and fund raising initiatives, even prior to adopting comprehensive integration policies in the future.

⁵⁸ Migration Policy Group (2013): p. 7.

⁵⁹ See <http://armstat.am/file/doc/99486263.pdf>.

⁶⁰ US Department of State (2014b): p. 23.

⁶¹ See IDHR (2014).

⁶² See Herm, A. and Flander, A.O. (2015). This recent study focuses on reviewing migration statistics produced by the National Statistics Service of the Republic of Armenia and its compliance with European and international standards on migration and international protection statistics. It shows, among other conclusions, that the scope and detail of these statistics are rather limited and that migration statistics cannot be deemed reliable. ECRI considers that this situation applies to equality data and statistics in general and that, although some statistics disaggregated by ethnic origin can be found on www.armstat.am, there is no comprehensive system in place. See also Grigoryan, I. (2014): pp. 11 and 23, and Manke M. (2010).

⁶³ ECRI notes that line of action No. 4 of the Action plan for implementation of the policy concept for the state regulation of migration in the republic of Armenia in 2012-2016 includes action for the development of statistics. However, nothing similar can be found in the Action plan for the national strategy on human rights protection.

78. ECRI recommends that a national integration strategy be developed. This strategy should be prepared in consultation with representatives of the vulnerable groups concerned. It should also establish clear co-ordination mechanisms between all relevant ministries, implementing agencies and potential donors.
79. ECRI recommends that the various action plans containing programmes for the integration of vulnerable groups include a description of their objectives, understood as changes to be obtained in the situation of all vulnerable groups concerned, a complete set of criteria for assessing their impact on these groups, and a clear financial plan, identifying actions to be funded by the State budget and actions for which financing has to be sought from external donors. This recommendation applies to existing stand-alone programmes and to any future programmes deriving from the comprehensive integration policies currently being developed.

- **Historical ethnic, religious and linguistic minorities^{64 65}**

80. In its 3rd report⁶⁶, ECRI had already noted the authorities' considerable efforts in the field of ethnic-minority education and culture. It welcomes the additional efforts made in recent years and notes that most of the associations representing these minorities that ECRI's delegation met during its contact visit said that they did not feel discriminated against by the authorities and that they received sufficient support from the State.
81. In its 3rd report⁶⁷, ECRI recommended that priority be given to the setting up of kindergarten facilities in communities with ethnic-minority children lacking the necessary linguistic skills for attending elementary school. ECRI notes that CERD expressed the same concern, calling upon Armenia to "provide language support in pre-school education for minority pupils".⁶⁸ Other sources also refer to the insufficient availability of pre-school education and that pupils from ethnic minority background, such as Assyrian and Yezidi,⁶⁹ do not therefore have the opportunity to learn Armenian before they go to primary school and so risk falling behind from the start.⁷⁰ According to Save the Children, Armenia, only 28% of preschool age children in Armenia receive preschool education, mostly due to lack of relevant services or the poor quality of infrastructure.⁷¹
82. An Education Improvement Project in Armenia, which among other things was designed to "support the improvement of school readiness of children entering primary education" has benefited from financial support from the World Bank. This project was aimed in particular at improving the school readiness of over 12 000 children by expanding pre-school coverage in impoverished rural areas with national minority communities in several regions.⁷² The authorities have also indicated that, in order to make these initiatives sustainable, funds were gradually

⁶⁴ Issues relating to the preservation of the identity of historical ethnic, religious and linguistic minorities are dealt by the specialised Council of Europe monitoring mechanisms established under the Framework Convention for the Protection of National Minorities as well as under the European Charter on Regional or Minority Languages. ECRI will therefore focus on policies related to their social integration.

⁶⁵ According to the most recent census of 2011, out of the total population of 3 018 854, 2 961 801 are Armenians (98.1%), 35 308 are Yezidis (1.2%), 11 911 Russians (0.4%), 2 769 Assyrians (0.1%), 2 162 Kurds, 1 176 Ukrainians, 900 Greeks, 617 Georgians, and 476 Persians. Source: National Statistical Service of the Republic of Armenia, see www.armstat.am.

⁶⁶ ECRI (2011a): §65.

⁶⁷ ECRI (2011a): §72.

⁶⁸ See the references in UN Human Rights Council, Working group on the Universal Periodic Review (2014a): pp. 12, 8, 71.

⁶⁹ ECRI (2011a): §71.

⁷⁰ See Ulasiuk, I. (2013): p. 31.

⁷¹ <https://armenia.savethechildren.net/what-we-do/education>.

⁷² World Bank (2014).

allocated from the State Budget. As from 2014, these funds cover the needs for pre-school education in all regions.⁷³

83. Regarding ethnic-minority secondary-school graduates' access to higher education, ECRI noted in its 3rd report that the authorities had taken some steps in this respect but that a very limited number of persons had been able to benefit from these positive measures in favour of minorities. It had considered it necessary for those *ad hoc* arrangements to be formalised, and that a law on facilitating access to higher education for ethnic-minority secondary-school graduates had to be adopted.⁷⁴ ECRI has not been informed that such a law has been enacted. It notes that the arrangements described in its 3rd report are still in place. According to the authorities, for the period 2010-2015, 9 ethnic-minority secondary-school graduates were granted facilitated access to various higher education institutions (6 from the Yezidi community, 2 from the Assyrian community and 1 from the Kurdish community). However, the statistical figures⁷⁵ published by the National Statistical Service show that, in the field of higher education, these positive measures have not been instrumental to decreasing the gap between ethnic minorities and the majority population in terms of educational outcomes, in particular for the Yezidi and Kurdish communities.
84. ECRI again recommends that a law be adopted on facilitating access to higher education for ethnic-minority secondary-school graduates.
85. With regards to housing, ECRI recommended in its 3rd report⁷⁶ that the authorities work towards relocating to adequate accommodation the Yezidi families in the Zovuni village who cannot obtain ownership certificates because of the proximity of their house to high-voltage cables. According to the authorities, this problem has grown over the years and affects various segments of the Armenian population, including groups belonging to the majority population. Due to legal loopholes, which appeared in the country's legal system after its independence from the Soviet Union, the relevant legislation has now been amended and the authorities are currently preparing a set of measures to address this global problem at national level in a non-discriminatory way.
86. In general, ECRI has already noted that there is insufficient equality data to have a clear picture of the situation with regard to discrimination (see §§76-77), and this also applies to historic minorities. ECRI considers that, without data and statistics, it is impossible to identify the problems which need solving. Therefore it refers here to its recommendations on integration policy planning for refugees and other migrants (see §§78-799) and considers that they should extend to historic minorities.

II. Topics specific to Armenia

1. Interim follow-up recommendations of the fourth cycle

87. In its 3rd report⁷⁷, ECRI recommended that the current system whereby the grant put at the disposal of the Co-ordination Council of Ethnic Minorities is distributed in equal shares independently of the size of each minority be set aside and replaced by a system whereby the grant is distributed according to each ethnic minority's real needs. In its interim conclusions, ECRI noted that the Armenian authorities had significantly increased their financial support to ethnic minorities in 2013 but expressed various concerns about the Co-ordination Council's ability to make its decisions on an objective basis. The Armenian authorities have since

⁷³ Republic of Armenia (2016): §49.

⁷⁴ ECRI (2011a): §84.

⁷⁵ See <http://armstat.am/file/doc/99486268.pdf>.

⁷⁶ ECRI (2011a): §87.

⁷⁷ ECRI (2011a): §69.

pointed out that objective criteria for distributing the grants have been unanimously adopted by the members of the Council. Rules of procedures have been prepared by the members of the Council themselves and have been unanimously adopted. According to these rules, priority is given to minorities who cannot rely on national and state structures, and to projects for the development of their national culture and the preservation of their language and identity. ECRI considers that its recommendation has been implemented.

88. In its 3rd report⁷⁸, ECRI recommended that the authorities ensure that no refugee families live in non-renovated accommodation in the Nor-Nork centre. In its interim conclusions, ECRI noted that urgent repairs and some renovation had been carried out. The Armenian authorities have since informed ECRI that bathrooms and elevators have been installed and staircases refurbished. They also informed ECRI that the donor conference referred to in ECRI's recommendation had been held but that only USD 50 000 were received, from the Government of Brazil. During its contact visit, ECRI's delegation could see that the above-mentioned repair work had resulted in some improvements. However, this repair work had been carried out in a piecemeal fashion, in different sections of the building at different times. As a result, parts had deteriorated again, in particular due to leakage leading to damp and mould. ECRI therefore considers that its recommendation has not been fully implemented. It understands that funding such repair work remains a problem in Armenia's current economic context. It refers here to its recommendation in §§78 and 79, stressing the fact that the renovation of the Nor-Nork reception centre should be included in an overall financial plan.

2. Policies to combat discrimination and intolerance against LGBT persons⁷⁹

- Data

89. There is no official data on LGBT persons in Armenia. The authorities explain that Article 23 (2) of the Armenian Constitution prohibits the obtaining, keeping, use and dissemination of personal data except for the cases stipulated by law and without the person's consent.⁸⁰ However, ECRI refers to Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity, which indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. ECRI notes the various constitutional amendments of December 2015 appearing to allow improvement in personal data protection.
90. The little information available comes from various surveys and studies. According to a survey conducted in 2012 by a local NGO, 72% of the Armenian population believe that the state should take measures to "fight against homosexuals".⁸¹ A survey released the same year by OECD and the Caucasus Research Centre revealed that 94% of the persons interviewed in Armenia would not want a gay neighbour.⁸² NGOs report that "society either believes that homosexuality is a disease to be treated or people simply do not wish to accept something which is different from their traditional understanding of morality and family." As a result, LGBT persons living in Armenia "exist, but not many are out

⁷⁸ ECRI (2011a): §113.

⁷⁹ For terminology, see the definitions set out in Council of Europe, Commissioner for Human Rights 2011.

⁸⁰ <http://www.parliament.am/parliament.php?id=constitution&lang=eng>

⁸¹ PINK Armenia (2011b): p. 16.

⁸² ILGA-Europe (2013): p. 49.

in the open. They are hiding, though the general attitude is not negative; they are just seen to be ill people who are unfortunate to be born like that.”⁸³

- **Legislation**

91. A general equality clause is included in Article 14.1 of the Armenian Constitution, prohibiting discrimination on grounds of, among other things, gender and “other personal or social circumstances”. This clause mentions neither the ground of sexual orientation nor that of gender identity. As indicated in the section of this report on civil and administrative legislation, Armenia has no specific antidiscrimination act. However, the authorities have pointed out that, in accordance with Article 15.4 of the Judicial Code, it is possible to refer to the case law of the European Court of Human Rights in proceedings before national courts. Therefore, in principle, persons discriminated against on grounds of sexual orientation or gender identity could use this possibility before national courts. However, ECRI understands that, as was the case for hate speech (see §46), general antidiscrimination standards have not been applied so far to LGBT persons in court proceedings, and the authorities have not provided ECRI with references to relevant case law in this respect. Moreover, since the burden of proof lies with the victim and there exists neither a legal definition of discrimination in Armenian law nor an adequate mechanism for investigating discrimination complaints, it remains difficult to prove discrimination cases on the grounds of sexual orientation or gender identity.⁸⁴ Furthermore, ECRI reiterates that the Criminal Code does not refer to sexual orientation and gender identity as characteristics of the victims of racist acts that are classified as criminal offences (see §2). Similarly, these grounds are not specified in Article 63 of the Criminal Code stipulating that, for any offence not referred to in relevant specific national-law provisions, a racist motivation shall be considered an aggravating circumstance (see §7 above). In this respect, it refers here to its recommendations in §26.
92. Armenian law does not contain any provisions on the change of legal gender. Legally, transgender individuals in Armenia are unable to receive sex change operations or to change their civil status.⁸⁵ No legislation exists concerning legal recognition of transgender individuals’ new and/or preferred gender.⁸⁶ Armenian legislation neither prohibits gender reassignment surgery, nor regulates it. As regards change of name, Article 58 of the Civil Status Act provides for the possibility to change one’s name, but does not specify whether transgender persons can change their names.⁸⁷ ECRI considers that this situation possibly amounts to a breach of Article 8 of the European Convention on Human Rights (right to respect for private and family life).
93. ECRI recommends that the authorities carry out a study on the compatibility of legislation with Article 8 of the European Convention on Human Rights (right to respect for private and family life) with regard to the possibility of changing one’s civil status in connection with recognition of new and/or preferred gender. It also recommends that all relevant laws be amended where required.
94. On a different issue, Armenian law does not recognise registered partnerships or other formalised relationships between LGBT persons.⁸⁸

⁸³ COWI (2010): p. 5.

⁸⁴ COWI (2010): p. 13.

⁸⁵ PINK Armenia et al. (2012): p. 20.

⁸⁶ PINK Armenia et al. (2012): p. 20.

⁸⁷ COWI (2012): pp. 26-27.

⁸⁸ It follows that there is no legal provision under Armenian law for homosexual couples to adopt a child.

- **Specialised national bodies**

95. As indicated in the section of this report covering legislation, the Defender is responsible for protecting individuals from the violation of their human rights and fundamental freedoms by public authorities, but the mandate of this institution does not make any specific reference to complaints filed on grounds of sexual orientation or gender identity. As regards other functions, it should be underlined that in 2011 the Human Rights Defender signed a co-operation agreement with an LGBT NGO (Pink Armenia) on the protection of LGBT rights.⁸⁹ In 2012, the Defender used its powers in the field of legislative initiative to promote a draft law on anti-discrimination which specifically refers to “discrimination based on sexual orientation and gender identity”. In May 2012, the Defender made a press statement condemning incidents of intolerance against LGBT persons.⁹⁰ The Defender’s annual report on human rights protection in Armenia published in April 2015 includes some of the main issues LGBT people face in the country and refers to violations of LGBT persons’ rights in 2014.⁹¹

- **Discrimination in various fields**

96. ECRI has already noted a high level of hostility and intolerance against LGBT people in various sections of this report (see §§29-32, §59 and §90). It has also underlined the lack of comprehensive legislation prohibiting discrimination, in particular on grounds of sexual orientation and gender identity, and has expressed concerns about the effectiveness of these legal provisions as well as of their application (see §91), and, finally, the lack of data on LGBT persons and their living conditions in Armenia (see §89 above). ECRI notes that similar conclusions have been expressed in the Rainbow Europe Map 2014 reflecting European countries’ legislation and policies guaranteeing LGBT human rights, where Armenia has the third lowest score in Europe.⁹²

97. In the field of employment, a survey conducted by a local NGO and released in 2013 indicates that 51% of LGBT persons in Armenia always or often avoid revealing their sexual orientation at work. Another report highlights the risk of dismissal for persons who are openly LGBT in the workplace. The same situation prevails in the field of housing. Although sexual orientation is very seldom used as a formal ground for rejection, in general, negative public attitudes and non-transparent procedures for renting a private apartment make submitting formal complaints almost impossible.⁹³ In the field of health, 54% of the participants in a survey released in 2013 reported that they had faced discriminatory attitudes in healthcare institutions.⁹⁴ Another report shows that many doctors discriminate against LGBT persons by refusing to treat them because of their actual or perceived sexual orientation or gender identity.⁹⁵

98. In the field of education, the government states that curricula in primary schools include subjects related to sexual matters and address discrimination. Pupils acquire knowledge about sexual matters, learn about addressing discrimination on sexual grounds and acquire tolerance skills.⁹⁶ However, ECRI understands that topics related to sexual orientation and gender identity or the issues of

⁸⁹ PINK Armenia (2011a).

⁹⁰ News.Am (2012).

⁹¹ PINK Armenia (2015a).

⁹² <http://www.ilga-europe.org/rainboweurope/2014>.

⁹³ COWI (2010), p. 14.

⁹⁴ PINK Armenia (2013): p. 17.

⁹⁵ PINK Armenia et al. (2012) : p. 10.

⁹⁶ Follow-up to Recommendation CM/Rec(2010)05, contribution by Armenia, section 2.67, [http://www.coe.int/t/dghl/standardsetting/hrpolicy/others_issues/lgbt/Questionnaire/CDDH\(2013\)004_FIN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/others_issues/lgbt/Questionnaire/CDDH(2013)004_FIN.pdf).

homophobia/transphobia are not properly covered in sex education classes in schools. Research conducted by a local NGO indicates that 55% of the LGBT persons interviewed in Armenia always avoid revealing their sexual orientation at school or university.⁹⁷ Moreover, 36% of them reported being subject to verbal harassment (hate speech, mockery, ridicule) during their schooling.⁹⁸

99. ECRI's analysis shows the pressing need for the Armenian authorities to adopt comprehensive legislation to protect against discrimination, including on grounds of sexual orientation and gender identity and to establish effective mechanisms and procedures for dealing with complaints in this area. ECRI refers to its relevant recommendations in this respect (see §17) and underlines the need for a sectorial action plan that could, for instance, be integrated into the overall plan for human rights 2017-2019 currently being developed and that would address the particular situation of LGBT persons in Armenia. Such a plan should include the objectives of raising awareness of the rights of LGBT persons and their living conditions; promoting understanding of LGBT persons; making their right to equal treatment a reality; enacting legislation to protect LGBT persons and tackling the most pressing issues of concern, as described in the preceding paragraphs
100. ECRI recommends that the government task an appropriate authority with preparing an action plan concerning LGBT issues, which should include the objectives of raising awareness of the rights of LGBT persons and of their living conditions; promoting understanding of LGBT persons; making their right to equal treatment a reality; enacting legislation to protect LGBT persons and tackling the most pressing issues of concern, as described in the preceding paragraphs.

⁹⁷ PINK Armenia et al. (2012), p. 7.

⁹⁸ Ibidem, p. 9.

INTERIM FOLLOW-UP RECOMMENDATIONS

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

- ECRI recommends that the authorities bring their criminal law, in general, into line with General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) explicitly include the grounds of colour, language, nationality (understood as citizenship) national or ethnic origin, sexual orientation, and gender identity in the list of “prohibited grounds”; (ii) criminalise incitement to violence and incitement to racial discrimination, and (iii) criminalise the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity and war crimes.
- ECRI recommends that the various action plans containing programmes for the integration of vulnerable groups include a description of their objectives, understood as changes to be obtained in the situation of all vulnerable groups concerned, a complete set of criteria for assessing their impact on these groups, and a clear financial plan, identifying actions to be funded by the State budget and actions for which financing has to be sought from external donors. This recommendation applies to existing stand-alone programmes and to any future programmes deriving from the comprehensive integration policies currently being developed.

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

LIST OF RECOMMENDATIONS

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

1. (§ 10) ECRI recommends that the authorities bring their criminal law, in general, into line with General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) explicitly include the grounds of colour, language, nationality (understood as citizenship), national or ethnic origin, sexual orientation, and gender identity in the list of “prohibited grounds”; (ii) criminalise incitement to violence and incitement to racial discrimination, and (iii) criminalise the public denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity and war crimes.
2. (§ 17) ECRI again recommends that the Armenian authorities adopt comprehensive civil and administrative legislation against discrimination - which should also cover the grounds of interest to ECRI - in all key fields of life. In this connection, it refers to its General Policy Recommendation No. 7.
3. (§ 23) ECRI recommends that the law provides for shared burden of proof in discrimination cases. In addition, ECRI recommends that the authorities amend the Law on the Human Rights Defender to give him/her the power to examine complaints concerning discrimination, also on grounds of interest to ECRI, in the private sector. Alternatively, the authorities should establish an independent equality authority dealing inter alia with the discrimination grounds that are of interest to ECRI, as recommended in General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.
4. (§ 26) ECRI recommends that sexual orientation and gender identity be expressly added to the prohibited grounds in Article 226 of the Criminal Code and that a provision be added to that Code explicitly stipulating that homo/transphobic motivation constitutes an aggravating circumstance for any ordinary offence.
5. (§ 44) ECRI again recommends that an independent mechanism be set up to deal with all types of complaints against the police.
6. (§ 49) ECRI again recommends that the authorities work in close co-operation with the media, without encroaching on their independence, in order to adopt a code of media ethics with clear provisions against racist and homo/transphobic hate speech, to promote adherence to it by the entire industry, and to organise appropriate training sessions for media professionals.
7. (§ 51) ECRI recommends that a code of conduct be introduced as soon as possible in Parliament sanctioning, inter alia, racist and homo/transphobic discourse.
8. (§ 54) ECRI recommends that all cases of public incitement to violence and hatred, threats against LGBT people on grounds of their alleged sexual orientation and/or gender identity, or against human rights defenders promoting their rights, be investigated and prosecuted accordingly.
9. (§ 55) ECRI recommends that the Armenian authorities make a public declaration condemning homo/transphobic hate speech and violence. It also recommends that all political parties take a firm stand against homo/transphobic discourse – especially when it is their members engaging therein.
10. (§ 64) ECRI again strongly recommends that criminal law is effectively applied to all cases of racist violence and incitement thereto -, including homo/transphobic incidents – in particular by focusing on respect of the law by

law enforcement officers. Moreover, the authorities should make the alleged racist and/or homo/transphobic motivation an integral part of the investigation into violent incidents from its very beginning and of any judicial proceedings that result therefrom.

11. (§ 71) ECRI recommends that a proportion of rooms in the State Migration Service “Integration Centre” be allocated to refugees who are not from Syria or are not of Armenian ethnic background.
12. (§ 78) ECRI recommends that a national integration strategy be developed. This strategy should be prepared in consultation with representatives of the vulnerable groups concerned. It should also establish clear co-ordination mechanisms between all relevant ministries, implementing agencies and potential donors.
13. (§ 79) ECRI recommends that the various action plans containing programmes for the integration of vulnerable groups include a description of their objectives, understood as changes to be obtained in the situation of all vulnerable groups concerned, a complete set of criteria for assessing their impact on these groups, and a clear financial plan, identifying actions to be funded by the State budget and actions for which financing has to be sought from external donors. This recommendation applies to existing stand-alone programmes and to any future programmes deriving from the comprehensive integration policies currently being developed.
14. (§ 84) ECRI again recommends that a law be adopted on facilitating access to higher education for ethnic-minority secondary-school graduates.
15. (§ 93) ECRI recommends that the authorities carry out a study on the compatibility of legislation with Article 8 of the European Convention on Human Rights (right to respect for private and family life) with regard to the possibility of changing one’s civil status in connection with recognition of new and/or preferred gender. It also recommends that all relevant laws be amended where required.
16. (§ 100) ECRI recommends that the government task an appropriate authority with preparing an action plan concerning LGBT issues, which should include the objectives of raising awareness of the rights of LGBT persons and of their living conditions; promoting understanding of LGBT persons; making their right to equal treatment a reality; enacting legislation to protect LGBT persons and tackling the most pressing issues of concern, as described in the preceding paragraphs.

BIBLIOGRAPHY

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

European Commission against Racism and Intolerance (ECRI)

1. ECRI (2014), Conclusions on the implementation of the recommendations in respect of Armenia subject to interim follow-up, CRI(2014)3.
2. ECRI (2012a), Statement by the European Commission against Racism and Intolerance about recent events in Armenia, involving leading political figures openly condoning homophobic violence.
3. ECRI (2011a), Third report on Armenia, CRI(2011)1.
4. ECRI (2007a), Second report on Armenia, CRI(2007)1.
5. ECRI (2003a), Report on Armenia, CRI(2003)36.
6. ECRI (1996), General Policy Recommendation No.1: Combating racism, xenophobia, antisemitism and intolerance, CRI(96)43.
7. ECRI (1997), General Policy Recommendation No.2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, CRI(97)36.
8. ECRI (1998a), General Policy Recommendation No.3: Combating racism and intolerance against Roma/Gypsies, CRI(98)29.
9. ECRI (1998b), General Policy Recommendation No.4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, CRI(98)30.
10. ECRI (2000), General Policy Recommendation No.5: Combating intolerance and discrimination against Muslims, CRI(2000)21.
11. ECRI (2001), General Policy Recommendation No.6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, CRI(2001)1.
12. ECRI (2003b), General Policy Recommendation No.7: National legislation to combat racism and racial discrimination, CRI(2003)8.
13. ECRI (2004a), General Policy Recommendation No.8: Combating racism while fighting terrorism, CRI(2004)26.
14. ECRI (2004b), General Policy Recommendation No.9: The fight against antisemitism, CRI(2004)37.
15. ECRI (2007b), General Policy Recommendation No.10: Combating racism and racial discrimination in and through school education, CRI(2007)6.
16. ECRI (2007c), General Policy Recommendation No.11: Combating racism and racial discrimination in policing, CRI(2007)39.
17. ECRI (2009), General Policy Recommendation No. 12: Combating racism and racial discrimination in the field of sport, CRI(2009)5.
18. ECRI (2011b), General Policy Recommendation No.13: Combating anti-Gypsyism and discrimination against Roma, CRI(2011)37.
19. ECRI (2012b), General Policy Recommendation No.14: Combating racism and racial discrimination in employment, CRI(2012)48.

Other sources

20. Action Plan for implementation of the policy concept for the state regulation of migration in the Republic of Armenia in 2012-2016.
21. Republic of Armenia (2016), Seventh-Eleventh (joint) Periodic National Report of the Republic of Armenia on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, CERD/C/ARM/7-11.
22. National Statistical Service of the Republic of Armenia, Population census 2011, <http://armstat.am/file/doc/99486263.pdf>
23. Council of Europe (2011), Discrimination based on sexual orientation and gender identity in Europe.

24. Council of Europe (2014), Protection of the Rights of Children from Religious and Ethnic Minority Groups in Armenia – Field Study Report.
25. Council of Europe, Committee of Ministers (1997), Recommendation No. R (97) 20 on “hate speech”.
26. Council of Europe, Committee of Ministers (2010), Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.
27. Council of Europe, Committee of Ministers (2015), Communication from Armenia concerning the case of Virabyan against Armenia (Application No. 40094/05). DH-DD(2015)206.
28. Council of Europe, Steering Committee for Human Rights (CDDH) (2013), Follow-up to Committee of Ministers’ Recommendation CM/Rec(2010)05 on measures to combat discrimination on grounds of sexual orientation or gender identity, [http://www.coe.int/t/dghl/standardsetting/hrpolicy/others_issues/lgbt/Questionnaire/CDDH\(2013\)004_FIN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/others_issues/lgbt/Questionnaire/CDDH(2013)004_FIN.pdf).
29. Council of Europe, Parliamentary Assembly (2015), Discrimination against transgender people in Europe - Resolution 2048(2015).
30. Council of Europe, Commissioner for Human Rights (2015), Report following his visit to Armenia from 5 to 9 October 2014, CommDH(2015)2.
31. Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2014), Fourth report submitted by Armenia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/IV(2014)013.
32. United Nations (UN), Committee on the Elimination of Racial Discrimination (CERD) (2011), Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/ARM/CO/5-6.
33. UN, Human Rights Council (HRC), Working Group on the Universal Periodic Review (WG on the UPR) (2014a), Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21 – Armenia, A/HRC/WG.6/21/ARM/2.
34. UN, HRC, WG on the UPR (2014b), Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, A/HRC/WG.6/21/ARM/3
35. UN, HRC, WG on the UPR (2015), Report of the Working Group on the Universal Periodic Review – Armenia, A/HRC/29/11.
36. Save the Children, Armenia – Education, <https://armenia.savethechildren.net/what-we-do/education>.
37. World Bank (2014), World Bank Supports Improvement in Education in Armenia, <http://www.worldbank.org/en/news/press-release/2014/03/13/world-bank-supports-improvements-in-education-in-armenia>.
38. European Commission, High Representative of the European Union for Foreign Affairs and Security Policy (2015), Joint Staff Working Document, Implementation of the European Neighbourhood Policy in Armenia Progress in 2014 and recommendations for actions, SWD(2015) 63 final.
39. European Union (2012, October 17), Human rights films screenings in Congress Hotel cancelled.
40. Organisation for Security and Co-Operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR) (2015), Hate Crime Reporting.
41. Amnesty International (2015), Amnesty International Report 2014/15: The State of the World’s Human Rights.
42. Amnesty International (2013), Armenia: No space for difference.
43. Armenia Now (2012, October 17), No Kid Stuff Protest in Yerevan opposes screening of film on gay rights at puppet theatre.
44. Caucasus Equality News Network (2014, November 5), Armenia: Civil society activists join to condemn Iravunk court ruling,

<https://cennetwork.wordpress.com/2014/11/05/armenia-civil-society-activists-join-to-condemn-iravunk-court-ruling/>.

45. Committee to protect freedom of expression (2014), Hate Speech in the Armenian Mass Media, <http://khosq.am/en/monitorings/hate-speech-in-the-armenian-mass-media/>.
46. COWI, Danish Institute for Human Rights (2010), Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Sociological Report: Armenia, http://www.coe.int/t/Commissioner/Source/LGBT/ArmeniaSociological_E.pdf.
47. COWI, Danish Institute for Human Rights (2012?), Study on Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity, Legal Report: Armenia, http://www.coe.int/t/Commissioner/Source/LGBT/ArmeniaLegal_E.pdf.
48. Eurasia Partnership Foundation (2012), Tolerance in Armenia Today: The Perspectives of Religious Tolerance - Occasional Policy Brief.
49. Ghazaryan, A. and Grigoryan, V. (2015): Is it expedient to adopt a separate non-discrimination law? Legal research, Eurasia Partnership Foundation, http://www.epfarmenia.am/wp-content/uploads/2014/06/Research-on-Anti-discrimination_-21.05.15-ENG_Final-1.pdf.
50. Grigoryan, I. (2014), Return and other forms of in-migration in Armenia: overview of policies and practices.
51. Helsinki Citizens' Assembly (2015), Vanadzor Office, Statement about the homophobic and intolerant public speech by the Armenian MP Naira Zohrabyan, <http://hcav.am/en/events/05-05-2015/>.
52. Herm, A. and Flander, A.O. (2015), Report on Sector Review on Migration Statistics in the Republic of Armenia.
53. ILGA-Europe: Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2013, <http://www.ilga-europe.org/rainboweurope/2014>).
54. International Centre for the Legal Protection of Human Rights (Interights), Oganezova v Armenia, <http://www.interights.org/oganezova-v-armenia/index.html>.
55. International Commission of Jurists (2007), Yogyakarta Principles, Principles on the application of international human rights law in relation to sexual orientation and gender identity, http://www.yogyakartaprinciples.org/principles_en.pdf.
56. Institute for Democracy and Human Rights (IDHR) (2014), Efficiency assessment report on the Armenian national strategy on human rights protection.
57. Kruma, K. (2013), Comparative study on integration policies in CARIM-East countries, Consortium for Applied Research on International Migration (CARIM) – East Research Report 2013/40.
58. Manke, M. (2010), Enhancing migration data collection, processing and sharing in the Republic of Armenia: Needs assessment and gap analysis report, International Organization for Migration, strategy on human rights protection.
59. Migration Policy Group (2013), ARMENIA – A Migrant Integration Policy Index (MIPEX) assessment, OSCE/ODIHR.
60. Mikaelian, H. (2011), Nationalist Discourse in Armenia, Caucasus Institute, 2002-2011.
61. Public Information and Need of Knowledge (PINK) NGO, the Heartland Alliance for Human Needs and Human Rights, ILGA-Europe: The European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, and The George Washington University Law School International Human Rights Clinic (2012), Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Armenia: A Shadow Report Submitted for consideration at the 105th Session of the Human Rights Committee, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBT_Armenia_HRC105.pdf.
62. Minority Rights Group International (2014), State of the World's Minorities and Indigenous Peoples 2014, Events of 2013.
63. News.am (2012, May 23), Armenian Ombudsman condemns incidents of intolerance against LGBT, available at <http://news.am/eng/news/106510.html>.

64. Pink Armenia (2011a, June 13), Historic memorandum between Armenia human rights Ombudsman and PINK Armenia on protection of LGBT rights, <http://pinkarmenia.blogspot.nl/2011/06/historic-memorandum-between-armenia.html>.
65. Pink Armenia (2011b), We and our rights, Public opinion towards LGBT people in Yerevan, Gyumri and Vanadzor cities, <http://issuu.com/pinkarmenia/docs/lgbtsurveyen/17?e=0>.
66. Pink Armenia (2013), Monitoring of Human Rights Violations of LGBT Persons in Armenia <http://issuu.com/pinkarmenia/docs/lgbtmonitoring/3?e=4137256/5170316>.
67. Pink Armenia (2014), Iravunk newspaper continues to preach violence, <http://www.pinkarmenia.org/en/2014/07/iravunknewspaper/>.
68. Pink Armenia (2015a, April 21), The Ombudsman's annual report also refers to LGBT issues, <http://pinkarmenia.blogspot.fr/2015/04/the-ombudsmans-annual-report-also.html>.
69. Pink Armenia and Socioscope (2015b), The impact of LGBT emigration on economic indicators of Armenia.
70. Press.am (2014, July 2), Monitoring Study Found Few Instances of Hate Speech in 9 Armenian Media Outlets, <http://www.epress.am/en/2014/02/07/monitoring-study-found-few-instances-of-hate-speech-in-9-armenian-media-outlets.html>.
71. Temesvári, M. and Kokkinaki, C.V. (2013) Analysis of Armenian migration legislation and practice as compared to EU standards, International Organization for Migration.
72. Ulasiuk, I. (2013), National Minorities and Migration in Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine, Consortium for Applied Research on International Migration (CARIM) - East Research Report 2013/33.
73. US Department of State (2014a), International Religious Freedom Report for 2013 – Armenia. <http://c-i.am/wp-content/uploads/2011-Nationalist-Discourse-eng.pdf>.
74. US Department of State (2014b), Armenia 2013 Human Rights Report.
75. Yerevan Press Club (2012), Analysis of Armenia's Judicial Practice in Cases of Libel and Insult http://ypc.am/upload/Analysis%20of%20Armenia%E2%80%99s%20Judicial%20Practice%20in%20Cases%20of%20Libel%20and%20Insult_eng.pdf.

APPENDIX: GOVERNMENT'S VIEWPOINT

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Armenia

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of Armenia on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account developments up until 17 March 2016, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

OBSERVATIONS BY THE REPUBLIC OF ARMENIA IN RESPECT OF THE FOURTH REPORT BY THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI) ON ARMENIA

Report	Comment
<p>Summary, page 7 <i>“In the field of integration, ECRI notes that Armenia has not yet adopted a comprehensive integration policy.”</i></p>	<p>It should be noted that Armenia has undertaken the development of the draft “Concept on integration policy for persons recognized as refugees and granted asylum as well as long-term migrants in the Republic of Armenia” (see also comments on paragraph 78). Moreover, the structure of the State Migration Service of the Ministry of Territorial Administration of the Republic of Armenia has been changed by Decision of the Government of the Republic of Armenia No 212-N of 6 March 2014, pursuant to which a division on integration issues has been established.</p>
<p>Paragraph 23 <i>“In addition, ECRI recommends that the authorities amend the Law on the Human Rights Defender to give him/her the power to examine complaints concerning discrimination, also on grounds of interest to ECRI, in the private sector. Alternatively, the authorities should establish an independent equality authority dealing inter alia with the discrimination grounds that are of interest to ECRI, as recommended in General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. ”</i></p>	<p>Clarification Pursuant to part 1 of Article 191 of Chapter 10 of the Constitution of the Republic of Armenia as amended on 6 December 2015, the Human Rights Defender is an independent official that oversees the maintenance of human rights and freedoms by state and local self-government bodies and officials, and in cases provided for by the Law “On the Human Rights Defender” – also by organisations, and contributes to the restoration of violated rights and freedoms, improvement of regulatory legal acts related to the rights and freedoms. Taking into consideration the requirements of part 2 of Article 210 of the Constitution of the Republic of Armenia as amended on 6 December 2015, as well as Decree of the President of the Republic of Armenia No NH-170-A of 10 February 2016, the Draft Law (Constitutional Law) of the Republic of Armenia “On the Human Rights Defender” is currently being developed, which will prescribe the cases where the Defender will also have the opportunity to oversee the maintenance of human rights and freedoms by organisations, and contribute to the restoration of violated rights and freedoms. Besides, the Financing Agreement of “Support to human rights protection in Armenia” EU budget support programme envisages reinforcement of discrimination prevention mechanisms through expanding the relevant powers of the Human Rights Defender.</p>
<p>Paragraph 29 <i>“Following an arson attack on the DIY club, a gay-friendly bar in Yerevan [...].”</i></p>	<p>It should be noted that the persons having committed the mentioned crime have been identified and subjected to criminal liability.</p>

Report	Comment
<p data-bbox="225 192 644 322">Paragraph 31 “ECRI notes intolerant statements against Azerbaijanis [...].”</p>	<p data-bbox="667 192 1364 696">The wording is not acceptable since it has been written in order to create an equality between Azerbaijani attitudes towards Armenians and vice versa, but it is obvious that these are incomparable. The Azerbaijani sponsored anti-Armenian propaganda, incitement and dissemination of hatred towards Armenians in Azerbaijani society, constant threats to resort to military means of the solution of Nagorno-Karabakh conflict, attempts to undermine the peace process and provoke hostilities across the line of contact, as well as the cases of torture and killing of Armenian civilians and soldiers held captive by Azerbaijani military forces, pose an immense threat to the establishment of regional peace and security.</p> <p data-bbox="667 696 1364 1473">Being guided by the principles and norms of the public international law as well as by the USSR laws in force at the time, the people of Nagorno-Karabakh decided by the referendum of 10 December 1991 to create an independent state, thus exercising their right to self-determination¹. However, the policy of ethnic cleansing and pogroms conducted by the Azerbaijani authorities against the Armenian population of Nagorno-Karabakh and in those cities of Azerbaijan where there was a large Armenian population (e.g. Baku, Sumgait, Kirovabad, etc.) over the time escalated into an obvious aggression and large scale war of Azerbaijan against Nagorno-Karabakh. In 1994, Azerbaijan, Nagorno-Karabakh and Armenia signed a trilateral ceasefire with no time limitations, which, despite violations, is still in force. Currently, the negotiation process over the peaceful settlement of the conflict continues with the mediation of OSCE Minsk Group co-chairs (Russia, USA and France), which is the only internationally mandated format of negotiations recognized by all the conflict parties.</p> <p data-bbox="667 1473 1364 1944">The results of Azerbaijan’s systematic policy of incitement and dissemination of Anti-Armenian hatred and intolerance have been clearly reflected in early April events of 2016. Disregarding the calls of the international community to settle the Nagorno-Karabakh conflict by peaceful means, Azerbaijan unleashed a large scale military offensive against the Nagorno-Karabakh Republic (NKR) by using heavy artillery, multiple rocket launchers, tanks and attack helicopters. Azerbaijani aggression was accompanied by flagrant violations of human rights and international humanitarian law such as deliberate shelling of civilian settlements and infrastructure, killings and torture of civilian</p>

¹ For detailed information on legal status of Nagorno-Karabakh see “Nagorno-Karabagh: Legal Aspects” by Shahen Avakian, Moscow 2015 (A PDF version is available at the following link - http://karabakhfacts.com/wp-content/uploads/2010/01/Legal-Aspects_Nagorno-Karabagh_en_2015.pdf).

Report	Comment
	<p>population and NKR Defense Army soldiers and mutilation of bodies of the deceased servicemen. In the very beginning of hostilities the shelling of an Armenian school by Azerbaijani artillery resulted in the death of a 12-year old schoolboy and the wounding of two other schoolchildren of the same age². These events were followed by the incursion of Azerbaijani forces in the Talish village of Nagorno-Karabakh, which resulted in the torture and killing of three elderly civilians with a severe cruelty³. During the hostilities NKR Army's three servicemen were savagely beheaded by the Azerbaijani military. Moreover, the chopped head of one of those soldiers was publicly demonstrated in Azerbaijani villages, and the footage of this action was widely shared on social media and gathered generally positive reactions and comments from the side of Azerbaijani users⁴. It should be also noted, that all the 18 bodies of the killed soldiers of the NKR Defense Army that were handed over by the Azerbaijani side had signs of torture and mutilation which had been registered also by independent international bodies.</p>
<p>Paragraph 31 <i>"In addition, some public surveys, which were furnished to the delegation subsequent to the visit, suggest a considerable level of prejudices towards Jews."</i></p>	<p>The claim is based only on single research, i.e. the study of the Anti-Defamation League (ADL)⁵, according to which 58 per cent of those surveyed in Armenia have anti-Semitic stereotypes. First, it is not clear what research and scientific and methodological tools have been used by the respective organization for its studies conducted in Armenia. The preliminary study within the framework of the ADL research relating to Armenia shows that the mechanisms of in-depth interviews have not been used during the implementation of the research by the organization. Thus, references of the ECRI to such sources may not be reliable, and the approach of the ECRI in giving such a formulation in the Report is simply not substantiated and lacks material basis. Moreover, Jewish community of Armenia claims exactly the opposite, assuring that Armenia is an exceptional country in terms of the atmosphere of tolerance, and anti-Semitism is simply foreign to the consciousness of Armenian people having survived genocide. President of the Jewish Community of Armenia, Rimma Varzhapetyan-Feller reaffirms: "No representative of any political force, political party or NGO in Armenia has ever uttered any anti-Semitic remarks. Rights of the Jewish community</p>

² See Interim public report of NKR Ombudsman, p. 16-15 - http://www.ombudsnkr.am/Interim_Public_Report_NKR_Omb_FINAL.pdf

³ Ibid., p. 17-15:

⁴ Ibid., p. 21-23:

⁵ Actually, there exists serious criticism in relation to the research activities carried out by this organisation in the whole world, and the scepticism about their surveys forces many scholars and institutes to question the quality and objectivity of the studies conducted by them.

Report	Comment
	have never been questioned here. The Armenian people always have respected the Jews and admired the rich history of our people. Since time immemorial the Jewish community of Armenia has found favourable environment for free existence and enrichment of their culture on this land of rich culture” ⁶ .
<p>Paragraph 39 <i>“In its 3rd report, ECRI recommended that the authorities look into the conditions under which this Aryan party operates and that they consider whether further action is required. ECRI is surprised that no measures have been taken in this respect.”</i></p>	<p>The “Armenian Aryan” political party of Armenia was registered on 27 March 1998 and regularly submitted financial statements reflecting a zero balance. This proves that the above-mentioned political party is legally registered in the State Register of Legal Persons of the Ministry of Justice of the Republic of Armenia but it does not carry out activities, and accordingly there are no factual grounds for holding the political party legally liable.</p>
<p>Paragraph 41 <i>“The third case concerned the sale of photo albums and various other publications about alleged Armenian propaganda and terrorist acts against Turkey and Azerbaijan; these allegedly amounted to incitement to racial and religious hatred. A suspect was arrested in April 2011. In April 2012, he was sentenced to four years’ imprisonment, but the Criminal Court of Appeal reversed this judgment. In July 2012, the General Prosecutor appealed against this decision, but ECRI understands that no date has yet been fixed for the hearing.”</i></p>	<p>The Court of Appeal decision of 20th July 2012 on case No EKD/0253/01/11 concerning the “The sale of photo albums about alleged Armenian propaganda and terrorist acts against Turkey and Azerbaijan” is in force.</p>
<p>Paragraph 43 <i>“Different claims have been made, one of them being that the police have reacted to hate speech complaints by bringing charges against the plaintiffs, in particular when the latter are sex workers.”</i></p>	<p>This claim is not substantiated as certain actions have been undertaken in the Republic of Armenian in recent years in the fight against trafficking, in particular the Law of the Republic of Armenia “<i>On identification of and support to persons subjected to trafficking in and exploitation of human beings</i>” was adopted by the National Assembly of the Republic of Armenia on 17 December 2014 which entered into force on 30 June 2015.</p>

⁶ See Open letter to Mr. David Harris, Executive Director at AJC Global Jewish Advocacy by Rimma Varzhapetyan-Feller, 15.05.2015 - http://www.jewishjournal.com/opinion/article/open_letter_to_mr._david_harris_executive_director_at_ajc_global_jewish_adv

Report	Comment
<p>Paragraph 43 <i>“The authorities have reminded ECRI that the Special Investigation Service is responsible for dealing with criminal complaints; however, ECRI recalls that an independent mechanism is needed that would deal with all manner of complaints including those that do not involve criminal charges.”</i></p>	<p>This recommendation is not justified, as according to Article 17 of the Law of the Republic of Armenia on “<i>Special Investigation Service</i>”, the Special Investigation Service is an <i>independent</i> state body and shall be independent when exercising its powers and obey only the law.</p>
<p>Paragraph 52, footnote 46 <i>“ECRI notes that, regarding the homo/transphobic articles published in newspapers (see §37), Iravunk’s editor-in-chief Hovhannes Galajyan received a special “Medal of Appreciation” from President Serzh Sargsyan for his contribution to the creation of this newspaper, its continuing commitment and successful work.”</i></p>	<p>H. Galajyan was, indeed, decorated according to the decree of the President of the Republic of Armenia. However, it was based on grounds other than those presented in the Report. The text of the decree of the President is presented below: “Guided by point 16 of Article 55 of the Constitution of the Republic of Armenia and taking as a basis the Law of the Republic of Armenia on “State awards and honorary titles of the Republic of Armenia”, I hereby decide: To decorate editor-in-chief of the newspaper Hovhannes Galajyan with a Medal of Appreciation on the occasion of the 25th anniversary of “Iravunk” newspaper, for his contribution to the establishment of the newspaper, as well as long-term commitment and fruitful work”⁷.</p>
<p>Paragraph 54 <i>“ECRI recommends that all cases of public incitement to violence and hatred, threats against LGBT people on grounds of their alleged sexual orientation and/or gender identity, or against human rights defenders promoting their rights, be investigated and prosecuted accordingly.”</i></p>	<p>The recommendation is not justified, as all cases of public incitement to violence are investigated and prosecuted.</p>
<p>Paragraph 58 <i>“On 13 September 2013, three unidentified young men tried to kidnap Pastor Bardakjian’s secretary. On 18 September 2013, shots were allegedly fired at a car driven by two members of the Church near the town of Sevan.”</i></p>	<p>The description of the incidents connected with Pastor of the Evangelical Church of Yerevan Levon Bardakjian among several cases of racist violence by no means may be defined as “racist violence”. The inquest conducted by the police and the court procedure with regard to the case do not provide any grounds for drawing such a conclusion.</p>
<p>Paragraph 61 <i>“[...] PINK Armenia mentioned cases where the police initiated criminal proceedings for false crime reporting</i></p>	<p>The Commission referred to cases related to the examination of complaints filed with the police and mentioned by PINK Armenia in page 7 of the PINK Armenia 2014 report, noting that the Police of the Republic of Armenia initiated criminal proceedings</p>

⁷ See decrees of the President of the Republic of Armenia: <http://www.president.am/hy/decrees/item/1556/>

Report	Comment
<p><i>against complainants on grounds of their alleged sexual orientation or gender identity.”</i></p>	<p>for false crime reporting against complainants on grounds of their alleged sexual orientation or gender identity. Please note that according to Article 4 of the Law of the Republic of Armenia “On the police”, the activities of the Police shall be regulated by the Constitution of the Republic of Armenia, this Law, other laws and legal acts, as well as international treaties of the Republic of Armenia.</p> <p>The principle of everyone’s equality before the law is stipulated by international treaties, as well as domestic legislation. Therefore, the Police of the Republic of Armenia, while exercising its functions, is guided exclusively by the mentioned principle and under no circumstances shows any form of discrimination, including that arising from the sexual orientation of individuals; any deviations from this order may only be exceptions, and if there is a relevant complaint with regard to such deviations, the case may be reinvestigated.</p>
<p>Paragraph 70 <i>“ECRI’s delegation noted that several rooms in this Centre were unoccupied.”</i></p>	<p>The occupation of rooms of the Integration Centre depends on whether there are any applicants at a given moment.</p>
<p>Paragraph 71 <i>“ECRI recommends that a proportion of rooms in the State Migration Service “Integration Centre” be allocated to refugees who are not from Syria or are not of Armenian ethnic background.”</i></p>	<p>The residence at the Centre does not depend on a person’s ethnic background or state of origin and is provided as and when necessary.</p>
<p>Paragraph 74 <i>“ECRI has noticed that these measures, which were adopted with a view to easing the integration of people fleeing Syria, have fuelled growing resentment among migrants who are not of ethnic Armenian background, and who consider these measures discriminatory.”</i></p>	<p>The low rate of recognising those asylum seekers who are not of ethnic Armenian background as refugees in the Republic of Armenia is not caused by discrimination against them. Applications for asylum in the Republic of Armenia, irrespective of the ethnic background of the person seeking asylum, shall be considered as prescribed by the Law of the Republic of Armenia “On refugees and asylum”, and a person is recognised as a refugee and granted asylum in the Republic of Armenia upon the decision of the Service, where there are grounds provided for by law. The studies show that the data of the majority of asylum-seekers who were not of ethnic Armenian background did not comply with the requirements of the law, the fact of having a well-founded fear of being persecuted in their country was not substantiated, as a result of which their applications were rejected by the Service.</p> <p>It is also necessary to note that the absolute majority of asylum-seekers are ethnic Armenians who are mainly citizens of Syria, Ukraine and Iraq. They have left their countries because of the</p>

Report	Comment
	military operations taking place there, which is a ground for recognising them as refugees and granting them asylum in the Republic of Armenia pursuant to the Law of the Republic of Armenia “On refugees and asylum”.
<p>Paragraph 78 <i>“ECRI recommends that a national integration strategy be developed. This strategy should be prepared in consultation with representatives of the vulnerable groups concerned. It should also establish clear co-ordination mechanisms between all relevant ministries, implementing agencies and potential donors.”</i></p>	<p>The draft <i>“Concept on integration policy for persons recognised as refugees and granted asylum as well as long-term migrants in the Republic of Armenia”</i> provides for a number of target measures for persons recognised as refugees in the Republic of Armenia, such as Armenian language and civic orientation courses, temporary housing solutions, etc. The concept also provides measures aimed at making the existing services more accessible for these persons.</p>
<p>Paragraph 84 <i>“ECRI again recommends that a law be adopted on facilitating access to higher education for ethnic-minority secondary-school graduates.”</i></p>	<p>Article 38 of the Constitution of the Republic of Armenia guarantees the right to education. Pursuant to part 1 of the mentioned Article, everyone shall have the right to education. The mentioned provision guarantees the right to education for every person, including ethnic minorities. Pursuant to part 2 of the same Article everyone shall, in the cases and under the procedure provided for by law, have the right to receive free education on a competitive basis in state higher and other vocational education institutions. The mentioned provisions of the Constitution have been regulated in detail by the Laws of the Republic of Armenia “On education”, “On higher and postgraduate professional education” and a number of other sectoral laws and other legal acts.</p>
<p>Paragraph 91 <i>“Similarly, these grounds are not specified in Article 63 of the Criminal Code stipulating that, for any offence not referred to in relevant specific national-law provisions, a racist motivation shall be considered an aggravating circumstance (see §7 above).”</i></p>	<p>It can be assumed from this paragraph that §7 refers to Article 63 of the Criminal Code of the Republic of Armenia; however, it should be noted that the committing of a criminal offence for national, racial or religious hatred, religious fanaticism, revenge for other persons’ lawful actions as a circumstance aggravating the liability and punishment is prescribed by point 6 of part 1 of Article 63.</p>
<p>Paragraph 92 <i>“Armenian law does not contain any provisions on the change of legal gender. Legally, transgender individuals in Armenia are unable to receive sex change operations or to change their</i></p>	<p>Pursuant to Article 39 of the Constitution of the Republic of Armenia, “A human being shall be free to do everything not violating the rights of others and not contradicting the Constitution and laws. No one may bear obligations that are not prescribed by law.”</p>

Report	Comment
<p><i>civil status. No legislation exists concerning legal recognition of transgender individuals' new and/or preferred gender. Armenian legislation neither prohibits gender reassignment surgery, nor regulates it."</i></p>	
<p>Paragraph 92 <i>"As regards change of name, Article 58 of the Civil Status Act provides for the possibility to change one's name, but does not specify whether transgender persons can change their names. ECRI considers that this situation possibly amounts to a breach of Article 8 of the European Convention on Human Rights (right to respect for private and family life)."</i></p>	<p>The Armenian legislation does not provide for grounds prohibiting change of name of a person on the ground of being transgender. Moreover, Article 58 of the Law of the Republic of Armenia on "Civil Status Acts" comprehensively prescribes an exhaustive list of grounds for refusing the registration of change of name, which are: the submitted documents do not comply with the requirements of the this Law and other legal acts, a criminal case has been instituted against the person wishing to change his or her name, he or she serves a criminal punishment, has a criminal record.</p>
<p>Paragraph 93 <i>"ECRI recommends that the authorities carry out a study on the compatibility of legislation with Article 8 of the European Convention on Human Rights (right to respect for private and family life) with regard to the possibility of changing one's civil status in connection with recognition of new and/or preferred gender. It also recommends that all relevant laws be amended where required."</i></p>	<p><i>See the first comment on Paragraph 92.</i></p>
<p>Paragraph 100 <i>"ECRI recommends that the government task an appropriate authority with preparing an action plan concerning LGBT issues [...]."</i></p>	<p>The Republic of Armenia has adopted a comprehensive Human Rights Strategy and Action Plan, which address the issues of discrimination. Moreover, the Draft law on Anti-Discrimination, which will comprehensively address all grounds of discrimination, is currently under discussion.</p>

