

**ECRI REPORT ON
“THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA”**

(fifth monitoring cycle)

Adopted on 18 March 2016

Published on 7 June 2016

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FOREWORD

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

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

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work 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 9 December 2015; 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 "the former Yugoslav Republic of Macedonia" on 28 April 2010, progress has been made in a number of fields.

In 2010, the Law on Prevention and Protection against Discrimination was adopted, which lists among the enumerated grounds race, colour, ethnic origin, language, citizenship and religion.

In 2014, a working group on hate crime was set up by the Ministry of Justice, in cooperation with the OSCE Mission to Skopje. It includes the Ministry of Interior, the Prosecutors Office, the Academy for Judges and Prosecutors and several NGOs. In 2015, the Ministry of Interior set up the Red Button reporting scheme, through which complaints about online hate speech can be lodged in a simplified manner via the internet.

A new legislative framework for the civil service and public employment was adopted in 2014 and is scheduled to be fully implemented by the end of 2015. It is supposed to streamline the recruitment process for all ethnic communities and establish a data collection system that monitors ethnic distribution of public sector employment.

The authorities also adopted the 2014 – 2020 Roma Strategy, which focuses on five strategic areas: employment, education, housing, health and culture. National Action Plans for the first four areas and for supporting Roma Women are to be adopted by the end of 2015.

ECRI welcomes these positive developments in "the former Yugoslav Republic of Macedonia". However, despite the progress achieved, some issues give rise to concern.

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

In the office of the Ombudsman, 17 positions have been vacant for several years as a result of a recruitment stop in the public sector. This serious shortage of staff affects the ability of the Ombudsman to carry out his work. The law establishing the Commission for Protection against Discrimination does not contain a provision of secretarial support staff to the Commission, which impedes the effectiveness of its work.

Ethnic tensions between the two largest communities remain high and racist hate speech is a widespread problem that remains largely unchecked and creates an atmosphere in which acts of racist violence can occur.

Furthermore, the levels of intolerance towards LGBT persons are alarmingly high and incitement to homo- / transphobic hatred and violence is increasing and is not effectively prevented or punished by the authorities. In addition, LGBT persons face other forms of discrimination and intolerance in their daily lives.

The situation of the Roma community is still very difficult, with high levels of socio-economic marginalisation, in particular in the areas of education, employment, housing and health. Recently, Roma have been subjected to racial profiling at the border when attempting to leave the country.

Several religious communities, in particular of Christian Orthodox faith, have still not been able to register, in spite of ECRI's previous recommendations to resolve the issue.

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

The authorities should bring the Criminal Code, as well as civil and administrative law provisions, in general, into line with ECRI's General Policy Recommendation No. 7.

The authorities should fill all the vacant positions in the Ombudsman's office as a first step towards ensuring that the office is adequately staffed in proportion to its workload. In this connection, the authorities should also provide secretarial support staff to the Commission for the Protection against Discrimination.*

The authorities should promote condemnation of hate speech and counter-speech by high-ranking officials and politicians. All political parties in the country should condemn hate speech and call on their members and followers to abstain from using it.

The authorities should expand existing training initiatives on racist and homo-transphobic violence for members of law enforcement agencies and the judiciary. Possible bias motivations should consistently be included in police reports and investigations, as well as in any further judicial proceedings. In order to address the problem of underreporting the authorities should implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the LGBT community.

The authorities are urged to settle, without any further delay, the issue of registration of religious minority groups. No excessive formalism should prevent their registration.

The authorities should ensure that the country's border police force receives adequate training to be able to carry out its duties without applying racial profiling.

The authorities should carry out an independent comprehensive study on all forms of discrimination against LGBT persons jointly with the LGBT community. This study should also pave the way towards preparing and adopting an action plan to end such forms of discrimination.*

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

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation against racism and racial discrimination¹

- Criminal law provisions

1. Generally speaking, the provisions of the country's Criminal Code (CC) reflect most of ECRI's recommendations concerning the use of criminal law contained in the General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. The relevant provisions are contained in articles 39(5), 319, 394-d, 403, 407 and 417 CC. Some provisions are, however, not always fully in line with GPR No. 7 and various gaps remain.
2. Article 39(5) CC establishes racial hatred, based on national origin, religion, race, colour, language or citizenship as an aggravating circumstance. Article 319 CC criminalises incitement to national, racial or religious hatred, discord and intolerance. Sexual orientation and gender identity are not included in either provision.²
3. In the past, former Article 173 CC criminalised insults or defamation because of race, colour, nationality or ethnic origin. The authorities informed the ECRI delegation that this provision has been removed from the Criminal Code and a corresponding provision has been incorporated into existing civil law covering slander and libel.
4. There is no provision to criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities.³
5. ECRI recommends that the authorities bring the country's Criminal Code, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should explicitly (i) criminalise public racist insults and defamations; (ii) add sexual orientation and gender identity to the list of enumerated grounds in Articles 39(5) and 319; and (iii) introduce a general provision to criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities.

- Civil and administrative law provisions

6. As regards the use of civil and administrative law to combat racism and racial discrimination, ECRI notes that the Law on Prevention and Protection against Discrimination of 2010 (henceforth: the anti-discrimination law) lists among the enumerated grounds race, colour, ethnic origin, language, citizenship and religion. Sexual orientation and gender identity are not included among the enumerated grounds.
7. There is no mention of segregation or discrimination by association in the anti-discrimination law, as recommended in § 6 of GPR No. 7.
8. While Article 5 of the anti-discrimination law prohibits discriminatory behaviour by public authorities, it does not expressly mention their duty to promote equality, as

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

² This is relevant for sections I.2, I.3 and II.5 of this report.

³ The authorities consider that creating a racist organisation and participating in its activities is criminalised under Article 394 CC, which bans criminal groups, in conjunction with Article 319 CC. However, ECRI has always advocated for racism-specific offences.

recommended in § 8 of GPR No. 7. Furthermore, the law does not place public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination, as recommended in GPR No. 7, § 9.

9. Under the anti-discrimination law, associations, such as human rights NGOs and other civil society groups, have the possibility to become a third party or a co-litigant in court cases, if the alleged victim of discrimination agrees. There is, however, no possibility for associations that have a legitimate interest in combating racism and racial discrimination to initiate a court case on behalf of a victim, or to bring civil cases, if a specific victim is not referred to, as recommended in § 25 of GPR No. 7.

10. ECRI recommends that the authorities bring the country's civil and administrative law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should amend the Law on Prevention and Protection against Discrimination with the aim of including (i) sexual orientation and gender identity into the enumerated grounds; (ii) segregation and discrimination by association; (iii) a possibility for associations that have a legitimate interest in combating racism and racial discrimination to initiate a court case on behalf of a victim and to bring civil cases or intervene in administrative cases even if a specific victim is not referred to; and (iv) an obligation on public authorities to promote equality and prevent discrimination and to ensure that contractors or partners they work with adhere to non-discrimination principles.

- **Independent authorities entrusted with the fight against racism and racial discrimination (GPR Nos. 2 and 7)⁴**

11. ECRI would like to reiterate the general importance of having effective and independent authorities entrusted with the fight against racism and racial discrimination, which are able to play a leading role in identifying, preventing and combating discrimination and support victims. ECRI notes that victims of alleged discrimination can complain to the Commission for protection against discrimination or to the Ombudsman. While the Commission for protection against discrimination has a general competence in the field of anti-discrimination, the Ombudsman only deals with the infringement of rights of natural persons, not legal persons, allegedly committed by public authorities.⁵

12. The Ombudsman is an independent authority. The Commission for protection against discrimination, on the other hand, cannot be characterised as fully independent due to the fact that some of its members are in the employment of the Ministry of Labour and Social Affairs.

13. Both bodies have most of the mandate and powers listed in ECRI's GPR No. 7. There are, however, no provisions that cover the recommendations made in §§ 25, 26 and 27 of GPR No. 7, concerning the right to initiate court cases even when a specific victim is not referred to; the availability of free legal aid, court appointed lawyers, and interpreters in discrimination cases; and protection against retaliatory measures.

14. ECRI recommends that the authorities change the status of the Commission for protection against discrimination with a view of making it fully independent. Furthermore, ECRI recommends that the authorities bring the mandate and powers of the Commission and the Ombudsman, in general, in line with ECRI's GPR No. 7. They should, in particular, grant both institutions the right to initiate court cases even when a specific victim is not referred to.

⁴ Issues concerning the effectiveness of these institutions are discussed in section II.2 of this report.

⁵ Article 2 of the Law on the Ombudsman (2003). See also: European Network of Legal Experts in the Non-discrimination Field (2014): 6.

2. Hate speech⁶

- Racist discourse

15. There are no official statistics available about the use of racist hate speech⁷ in the media or in other forms of public discourse⁸, but various reports of international organisations and NGOs indicate that there has been an escalation of hate speech in the country in recent years.⁹ In its fourth report, ECRI had already pointed to the fact that the media industry in the country is sharply divided along ethnic lines - as well as political affiliations.¹⁰ Since then this division has become further entrenched and fuels the spread of ethnic and religious hate speech in public discourse.¹¹ For example, the South East European Media Observatory concluded in 2014 that the worsening media environment had created a situation in which “the audiences are facing an avalanche of open verbal assaults, unprofessional behaviour, propaganda accompanied by instigations of fear and hatred towards all those who are considered to be different, with respect to ethnic, party, political, sexual or any other basis”.¹² This assessment has also been consistently confirmed by civil society representatives met by the ECRI delegation. Furthermore, racist hate speech often occurs in the context of nationalistic discourse in which ethnic, religious and other minorities (see also § 19), as well as moderate politicians and human rights activists, are labelled as traitors or foreign agents.
16. There are numerous examples of negative stereotyping in the media against both of the two main ethnic groups in the country and, to a somewhat lesser extent, against smaller groups. In February 2014, for example, the chief editor of the national TV station Sitel, Dragan Pavlovic-Latas, used hateful language against ethnic Albanians during a live broadcast.¹³ In January 2014, the Skopje-based Albanian-language TV station ERA broadcasted a song in which the killing of Orthodox people was praised. Another example is the popular TV show “Jadi burek” on Sitel 3, in which the moderator Janko Ilkovski permits callers from different ethnic groups to use inflammatory language towards one another.¹⁴ Most importantly, in October 2014, the Association of Journalists of Macedonia warned of increasing use of hate speech in debates on national TV and radio programmes, also by high-ranking government officials.¹⁵
17. As in many countries, the internet and social media have become a main platform and outlet for hate speech. Anonymous inflammatory comments are prevalent in social networks and user-generated content, such as the comment sections of online news portals. An absence of will among site owners and internet service providers to tackle this issue contributes to the existence of hate speech.¹⁶

⁶ For a definition of “hate speech” see Recommendation No. R (97) 20 of the Committee of Ministers to the member States on “hate speech”, adopted on 30.10.1997.

⁷ The authorities do neither collect statistics about hate speech cases in the context of criminal or administrative law, nor have they commissioned any studies or reports on hate speech.

⁸ Members of the Roma community, for example, informed the ECRI delegation about cases of racist insults made against them in public places.

⁹ European Commission (2014): 2 and 12-13; Transparency International Macedonia (2014); and Helsinki Committee for Human Rights of the Republic of Macedonia (henceforth: MHC) (2013): 19.

¹⁰ §§ 67-74 of ECRI’s 4th report on “the former Yugoslav Republic of Macedonia”.

¹¹ European Commission (2014): 2.

¹² South East European Media Observatory (2014).

¹³ Balkan Insight (2014).

¹⁴ Albanian Media Institute (2014): 123.

¹⁵ Association of Journalists of Macedonia (2014).

¹⁶ Europe and Eurasia Media Sustainability Index (2014): 77.

18. Numerous examples of hate speech can be found on Facebook, for instance on the fan pages of the popular TV hosts and journalists Janko Ilkovski (see also § 16), Sashe Ivanovski and Milenko Nedelkovski. Janko Ilkovski's TV show "Jadiburek" is uploaded on YouTube and linked to the social network profiles of its host, who allows his fans to use offensive language, such as the term Shiptars for Albanians.¹⁷ Anti-Albanian rhetoric is also common on Milenko Nedelkovski's Facebook page, where he stated that he "multiplies the Shiptars with zero". Furthermore, hate speech, also from ethnic Albanians, is widely used on fan pages of political parties, politicians and other prominent public figures.¹⁸
- **Hate speech directed against LGBT persons**
19. There is no official monitoring mechanism for homo-/transphobic hate speech and the authorities do not collect statistics about incidents. International organisations and human rights defenders agree, however, that homo- and transphobic hate speech is a widespread and rapidly growing problem.¹⁹ Just like racist hate speech (see § 15), it is often part of nationalistic discourse in which, among other groups, sexual minorities and their supporters are defined as a threat to the country.
20. Hate speech against LGBT persons in the media, in which negative stereotyping of sexual minorities is prevalent, as well as on the internet and in social media has grown in intensity and frequency in recent years.²⁰ Human rights observers noted that the use of homophobic language by politicians has also increased.²¹ This became evident, for example, in the context of a 2013 parliamentary discussion on a constitutional amendment to define marriage exclusively as a heterosexual union, when several members of Parliament engaged in homophobic rhetoric, which included labelling homosexuality as a disease and akin to paedophilia.²²
21. Statements by politicians, negative media coverage, and inflammatory comments on internet-based social media are increasingly interlinked in the field of hate speech against LGBT persons and mutually reinforce stereotypes and intolerance. In October 2012, the Minister of Labour and Social Policy, Spiro Ristovski, claimed on national TV that homosexuals cannot raise healthy children and the TV journalists presented homosexuality as a threat to the nation, drawing parallels between homosexuality, paedophilia and incest. Following these comments, several human rights NGOs held a press conference criticising the minister's statement. Media coverage of the press conference, however, presented the NGO criticism as calls for same-sex marriage, although this issue had not been raised, and a threat to family values. This was followed by numerous newspaper articles with homophobic connotations, for example in the newspaper Vecer, with titles such as "We want nephews, not faggots" and "Researchers prove that children of homosexual couples are victims of paedophilia". This is an example of homophobic hate speech, initiated by a politician and media outlets, which subsequently continues in internet news portals and social media.²³
22. The density of homo- and transphobic hate speech is also causing a rising number of threats made against LGBT persons, especially those who are publicly advocating for tolerance and non-discrimination. In 2013, for example, the LGBT

¹⁷ Albanian Media Institute (2014): 123.

¹⁸ Ibid.: 121-123.

¹⁹ European Commission (2014): 12-13.

²⁰ Ibid.; and United Nations Office of the High Commissioner for Human Rights (2014): 15-16.

²¹ Ibid.

²² Open Society Foundations (2013): 83-86.

²³ ILGA Europe (2013): 148.

NGO United received several death threats on its Facebook page.²⁴ Hate speech and threats against LGBT persons tend to increase as a result of negative media coverage in the run up to and aftermaths of public LGBT events, such as the Pride Week. Likewise, several attacks²⁵ on the LGBTI Support Centre in Skopje attracted hateful news coverage portraying the victims as provocateurs, which were followed by threats.

- **Measures taken by the authorities**

23. ECRI considers hate speech particularly worrying because it is often a first step in the process towards actual violence. Appropriate responses to hate speech include law enforcement channels (criminal and administrative law sanctions, civil law remedies) but also other mechanisms to counter its harmful effects, such as self-regulation, prevention and counter speech.

- *Criminal, administrative and civil law responses*

24. National legislation contains provisions which cover hate speech under Articles 173, 319, 394-d, 407-a and 417 (see section I.1). Hate speech is also prohibited under Article 3 of the Law on Political Parties, as well as under Article 4 (2) of the Law on Associations and Foundations. The application of relevant legislation concerning hate speech is, however, extremely weak.²⁶ This problem is rooted, at least partially, in a lack of will among the relevant authorities to apply the laws in an effective manner. Training of law enforcement officials, prosecutors and judges on legislation concerning hate speech is insufficient.²⁷ So far, the courts have not found anyone guilty of racist or homo-/transphobic hate speech. Moreover, on many occasions the Public Prosecutor have not even taken the initiative to file charges.²⁸ In spite of the increase in hate speech in recent years, there were no court proceedings for cases related to causing national, racial and religious hatred, discord or intolerance in 2013 and 2014.²⁹ In 2015, however, the prosecution services which had initially refused to investigate a case of alleged hate speech by Milenko Nedelkovski, were subsequently ordered by the Chief prosecutor to do so. ECRI expresses its hope that this might signal a shift in attitude towards hate speech.

25. Racist and homo-/transphobic hate speech in the media remains unpunished as there is no adequate response taken by the regulatory body or other relevant authorities against its widespread use.³⁰ While previous legislation prohibited the broadcasting of certain types of hate speech³¹, the new Law on Audio and Audiovisual Media Services of 2013 does no longer contain such administrative sanctions.³² The regulatory authority for audio-visual media responds to complaints from viewers and listeners and investigates alleged incidents of hate speech. If the regulatory authority finds that a particular broadcast might contain hate speech, it refers the case to the prosecution service for criminal investigations. In recent years, three to four cases are referred annually. Unfortunately the regulator is not informed subsequently about the outcome of

²⁴ ILGA Europe (2014): 111.

²⁵ See section I.3 for further details on acts of violence.

²⁶ Ibid.

²⁷ European Commission (2014): 13.

²⁸ Albanian Media Institute (2014): 104-106.

²⁹ Court cases falling into the broader category of what is often called hate speech in the country usually involve defamation cases brought by politicians or journalists against each other.

³⁰ Association of Journalists of Macedonia (2014) and Transparency International Macedonia (2014).

³¹ Article 69 of the Law on Broadcasting Activity (2005) prohibited programmes that were stirring national, racial, sexual or religious hatred and intolerance and provided for a fine from 200 000 to 300 000 Denars (3 300 – 5 000 Euros).

³² Albanian Media Institute (2014): 94.

the cases and can therefore not assess the usefulness of the materials it forwarded. Furthermore, there is no possibility for interventions, such as eliciting an apology or a promise of non-repetition from editors, below the threshold of a criminal prosecution. There is no equivalent regulatory authority for the print media.

- *Promoting media self-regulation*

26. The self-regulatory body of the media industry reviews alleged journalistic misconduct and publishes decisions and recommendations, which are, however, not legally binding and cannot be enforced. About 50% of decisions are not implemented. In spite of ECRI's recommendations in its fourth report³³ to bring together media professionals and civil society representatives to promote more effective media self-regulation, such initiatives remained timid and without effect. Initiatives in this direction, such as a joint workshop with media editors in 2015 to address the problem of hate speech, did also not find much echo among media professionals, with only some 20 out of 100 invitees participating. Interest in this area is extremely low among media professionals in the country and needs to be stimulated.

- *Combating online hate speech*

27. There is no regulatory mechanism for the internet in the country, and this area falls outside of the mandate of the authority for audio-visual media. In 2015, the Ministry of Interior set up the Red Button reporting scheme, through which complaints about online hate speech can be lodged in a simplified manner via the internet. So far, however, this scheme only resulted in users' reporting personal insults. This points to a general conceptual problem in the understanding of hate speech in the country, as it is insufficiently distinguished from acts of personal defamation or libel (see also section I.1), and does not focus on the incitement of hatred and discrimination against identity-based groups, such as ethnic, religious or sexual minorities.

- *Condemnation and Counter-Speech*

28. Civil society organisation have made significant efforts over the past years to react to racist and homo-/transphobic hate speech, for example by drawing public attention to incidents and condemning them (see for example § 21). The authorities, on the other hand, have not adopted such a positive attitude. A proposed declaration for the condemnation of hate speech against LGBT persons, for example, was submitted to Parliament in 2012 by Liberal Party MP Ivon Velichkovski. The Parliament, however, rejected the proposal.³⁴
29. A rare example of government (institutions) reacting to hate speech was observed in 2011, when the construction of a church-museum in Skopje's Kale fortress caused considerable inter-ethnic tension. The Ministry of Interior asked Facebook users to abstain from posting hateful content in this context.³⁵ Usually, however, hate speech in social media and on the personal profiles and fan pages of politicians and other public figures occurs largely without any measures being taken by the owners of these pages.³⁶
30. In February 2015, the Commission for Protection against Discrimination called on political parties, the media, citizens' associations and other institutions to refrain from provoking ethnic intolerance and hate speech.³⁷ ECRI welcomes such an appeal. It nevertheless considers that hate speech against LGBT persons should

³³ §§ 73-74 of ECRI's 4th report.

³⁴ MHC (2012): 13.

³⁵ Albanian Media Institute (2014): 122.

³⁶ Ibid.: 121-123.

³⁷ Republika (2015).

have been more explicitly included in it. It also notes that this statement had become not only necessary as a result of the rise in hate speech, but also due to the nearly complete absence of public condemnations of such incidents or examples of counter-speech by politicians and officials.

- *Programmes to prevent hate speech*

31. In recent years, in addition to attempts to sensitise media professionals (see § 26), some campaigns have been launched against hate speech in the country within the framework of international co-operation projects and with the support of national institutions, such as the Youth and Sports Agency.³⁸ Moreover, a National Strategy for Equality and Non-Discrimination on grounds of ethnicity, gender, age, and physical and mental disability (NSEN) was adopted in 2012 to cover a three-year period.³⁹ However, ECRI notes that religion and language were excluded from the National Strategy and that civil society participation in the strategy's preparation and implementation was limited. Moreover, there are no tangible results of these initiatives and no evaluation was carried out.
32. ECRI recommends that the authorities take urgent measures to tackle the growing problem of racist and homo-/transphobic hate speech, in particular by i) stepping up the training activities on hate speech for law enforcement officers, prosecutors and judges; ii) introducing administrative sanctions for hate speech in the Law on Audio and Audiovisual Media Services of 2013; iii) providing the regulatory authority for audio and audio-visual media services with the possibility of issuing warnings or demanding apologies in cases of racist or homo-/transphobic hate speech and related breaches of professional journalistic standards and ethics; iv) setting up a system of information sharing through which the regulatory authority for audio and audio-visual media services receives information from prosecutors and courts concerning cases that it forwarded in order to enable the regulatory authority to improve and optimise its media monitoring activities; and v) establishing effective regulatory bodies, while respecting the principle of media independence, that can monitor incidents of hate speech in print media and internet services. Furthermore, ECRI recommends that an evaluation of past initiatives to prevent hate speech is carried out with a view of building on existing efforts and expanding good practices, especially in the media and education sectors.
33. ECRI also recommends that the authorities promote condemnation of hate speech and counter-speech by high-ranking officials and politicians. All political parties in the country should condemn hate speech and call on their members and followers to abstain from using it.

3. Racist and homo- / transphobic violence

- **Data**

34. The authorities do not collect comprehensive data concerning racist or homo-/transphobic violence⁴⁰ and the country has not submitted any data to the OSCE/ODIHR annual hate crime reporting exercise. In 2013, the NGO Helsinki Committee for Human Rights of the Republic of Macedonia (henceforth: MHC), supported by the OSCE Mission to Skopje, began to collect information and to monitor and map such acts of violence to fill the gap caused by the absence of official data.⁴¹

³⁸ Independent.mk (2014); Centre for Intercultural Dialogue (2014); and Council of Europe / Centre for Intercultural Dialogue (2013).

³⁹ This initiative is related to one of ECRI's 2010 priority recommendations.

⁴⁰ European Commission (2014): 12; MHC (2015): 145. – Cf. § 65 of ECRI's 4th report on "the former Yugoslav Republic of Macedonia".

⁴¹ Around 50% of the incidents in both years were cross-checked by means of contact with the police, police bulletins, media reporting, meetings with victims, or by eye witnessing an incident. The remaining

- **Racist violence**

35. In 2013, some 100 incidents of racist or homo-/transphobic violence were recorded by MHC. Types of offences include assault, arson and vandalism. The majority of attacks were committed by juveniles. Victims and perpetrators were usually of different ethnicity, belonging to the two largest ethnic groups in the country.⁴² An estimated 84% of incidents occurred due to ethnic hatred, demonstrating the tense relationship between the two major communities in the country.⁴³ An example is the event of 1 March 2013, when a mob of 100 to 200 youths attacked ethnic Albanians in the centre of Skopje, injuring several victims.⁴⁴
36. Religious hatred is often occurring in parallel to ethnic tensions and accounted for 7% of recorded cases in 2013.⁴⁵ On 30 April 2013, for example, a group of youngsters attacked an Orthodox Church in the Cairin area of Skopje with stones during a religious service.⁴⁶ On 21 July, an Imam was attacked after a religious service in a village predominantly inhabited by Christian Orthodox residents in the area of Stip.⁴⁷
37. In 2014, MHC reported some 75 incidents, with approximately 61% of them due to ethnic hatred, 6% to religious hatred and 23% due to political affiliation.⁴⁸ Political and inter-ethnic tensions, however, often overlap in the country, especially during election periods, and one can easily fuel the other.⁴⁹ On 13 April 2014, for example, following the first round of the presidential elections, a group of men racially insulted and attacked an ethnic Albanian family in the Skopje neighbourhood of Radishani.⁵⁰ One of the attackers even drove a car into the group of victims, injuring several of them. Three days later, a group of 20 ethnic Albanians attacked three youngsters in the Bit Pazar area of Skopje, allegedly because of their non-Albanian ethnicity.⁵¹ Inter-ethnic relations can be characterised as so tense that often relatively minor issues lead to an eruption of violence, as happened on 5 August 2014 in a bar in Skopje's Old Bazaar, when about 10 ethnic Albanians started a fight, because their demand not to play music in the Macedonian language was ignored.⁵²
38. According to the UNHCR and the OSCE, several attacks against migrants took place during the period of April to July 2015 near the border with Greece, prior to the establishment of a corridor system by the authorities to channel the migration flow.⁵³ There are no figures available, but it is alleged that acts of violence were committed by local residents and, in some cases, also by law enforcement officers.

cases were included because of a high probability. For more information on the methodology see: MHC (2014): 2 and MHC (2015): 145-146.

⁴² MHC (2014): 3.

⁴³ Ibid.: 6.

⁴⁴ Ibid.: 8-9.

⁴⁵ Ibid.: 6.

⁴⁶ Ibid.: 31.

⁴⁷ Ibid.: 45-46.

⁴⁸ MHC (2015): 148.

⁴⁹ See for example: European Council on Foreign Relations (2015).

⁵⁰ MHC (2015): 177.

⁵¹ Ibid.: 179.

⁵² Ibid.: 190-191.

⁵³ Communicated during meetings with the ECRI delegation in September 2015.

- **Homo-/transphobic violence**

39. The growth in homo-/transphobic hate speech in the country (see section I.2) has created a general atmosphere in which violence against LGBT persons, in particular those advocating for LGBT rights, is becoming increasingly accepted. Hatred based on sexual orientation or gender identity was the motivation in 9% and 10% of the incidents recorded by MHC in 2013 and 2014 respectively (see §§ 35 and 37).⁵⁴ While these proportions do not seem to be very high, LGBT organisations point out that they reflect only a part of the problem because they mainly include cases which attracted public attention. Given the generalised intolerance against LGBT persons in the country (see section II.5), underreporting seems to be a bigger problem in the field of homo-/transphobic attacks than in the area of violence based on ethnic or religious hatred. In the latter category, victims usually have less of a problem making their identity known, also because they can often rely on established political networks representing their respective group at local and national level. LGBT persons, on the other hand, face high levels of stigmatisation if they reveal their identity by reporting a homo- or transphobic attack to the police. They also have no political support network.
40. Two cases illustrate the above-mentioned problem. In August 2014, a young homosexual man was violently attacked by two perpetrators shouting homophobic insults in a public location in Skopje known to be a meeting point for LGBT persons. When the victim reported the incident to the police, he was allegedly intimidated by the officers who threatened to charge him with making false accusations if he insisted on reporting a homophobic offence.⁵⁵ In another case in Skopje, four persons who had become victims of a homophobic attack in November 2014 informed MHC about the incident, but did not want to report it to the police.⁵⁶ The fact that underreporting also occurs in the capital city, where the civil society presence is stronger than in other parts of the country, is indicative of the scale of the problem and LGBT NGOs informed ECRI that the obstacles are even more pronounced in smaller towns and rural areas.
41. In ECRI's view, the importance of LGBT networks engaged in countering discrimination and assisting victims of homo-/transphobic violence cannot be overestimated. It is therefore of particular concern when these organisations themselves become the target of violence, as happened repeatedly. In the evening of 23 October 2014, for example, some 60 persons were celebrating the second anniversary of the LGBTI support centre in a Café in the Old Bazaar of Skopje, when they were suddenly attacked by a mob of about 40 masked men who injured several guests with glass bottles and punches. The centre has been attacked six times in total. On 22 June 2013, a group of dozens of masked men armed with stones, bars and glass bottles attacked the approximately 40 guests of the opening seminar of the Pride Week and endangered their lives by throwing pyrotechnical items into the LGBTI support centre.⁵⁷ Violence against LGBT groups is not confined to Skopje. In April 2013, several members of the LGBT NGO United were attacked by seven men in the city of Bitola when the activists were placing posters in support of LGBT rights.⁵⁸

⁵⁴ MHC (2014): 6 and MHC (2015): 148.

⁵⁵ MHC (2015): 193.

⁵⁶ Ibid.: 198-199.

⁵⁷ Open Society Foundations (2013): 70.

⁵⁸ Open Society Foundations (2013): 66. - The attacks were also connected to the death threats made against the group which are mentioned in § 22.

- **Measures taken by the authorities**

42. The authorities have taken some measures to deal with racist and homo-/transphobic violence, although these can, so far, not be considered adequate. Since the end of 2014, some positive trends have, however, become visible and ECRI hopes that they will continue.

- *Criminal law responses*

43. It seems that the police investigated most of the incidents reported to them. MHC reports that the police located suspected perpetrators connected to a minimum of 27 incidents which occurred in 2013. In a number of cases, however, criminal proceedings were not initiated. Examples include the Islamophobic attack mentioned in § 36, in which the police identified the perpetrators, but merely warned them that they might be prosecuted if they repeated such acts.⁵⁹ According to MHC, only one case was brought before a court in 2013.⁶⁰ In September 2015, the prosecution service informed the ECRI delegation that four cases were pending before the courts.

44. The (possible) bias motivation is usually not included by the police when recording incidents. Most cases are merely treated by the law enforcement agencies as acts of violence or vandalism without any consideration for the underlying elements of hatred. This renders it difficult, if not impossible, to take such a motivation into consideration during subsequent court proceedings, which might include the application of the law on aggravating circumstances. Furthermore, it also constitutes an obstacle to raising awareness of the problem of racist and homo-/transphobic violence.

45. Cases that illustrate the above-mentioned problems include the attacks against the LGBT support centre in Skopje. Only the last out of six attacks, the incident of 23 October 2014 (see § 41), triggered an investigation by the prosecutor, who had initially refused to take the case further but was eventually instructed by the 2nd level prosecutor to do so. The Ministry of Interior (henceforth: Mol), responding to a query from MHC, replied that they had registered the case and brought it to the attention of the public prosecutors' office. The Mol report, however, did not include any mention of the homo-/transphobic motivation of the offences, but merely reported general acts of violence.⁶¹ Similarly, in the case of the attack against the centre on 22 June 2013 (see § 41), an Mol report about the incident did neither mention the homo-/transphobic nature of the attack, nor the fact that it was an organised group that had carried it out. The report rather gave the impression that a group of teenagers had merely disturbed the peace by throwing a few stones and breaking windows.⁶²

- *Training of law enforcement officials and members of the judiciary*

46. In 2014, a working group on hate crime was set up by the Ministry of Justice, in cooperation with the OSCE Mission to Skopje. It also includes the Ministry of Interior, the Prosecutors Office, the Academy for Judges and Prosecutors and several NGOs. The group aims at streamlining efforts against racist and homo-/transphobic violence, inter alia by establishing a comprehensive data collection system and by organising trainings for members of law enforcement agencies and the judiciary. As a first step, 150 judges and prosecutors as well as 50 police officers participated in an OSCE/ODHIR anti-hate crime training (TAHCLE). The working group also promotes learning from other European experiences and already carried out a study visit to Croatia.

⁵⁹ MHC (2014): 46.

⁶⁰ Ibid.: 6-7.

⁶¹ MHC (2015): 198.

⁶² Open Society Foundations (2013): 70.

- *General public information and awareness-raising programmes*

47. In spite of the scale of the problem of racist and homo-/transphobic violence, no specific awareness-raising programmes on this issue have been conducted.⁶³ There is also no specific outreach activity to vulnerable communities, such as LGBT persons, to overcome existing obstacles to reporting acts of violence (see §§ 39-40), for example by building a better relationship with the police.

48. ECRI recommends that existing training initiatives on racist and homo-transphobic violence for members of law enforcement agencies and the judiciary are expanded. ECRI also recommends that the authorities ensure that a possible existence of a bias motivation is consistently taken into consideration in police reports and investigations, as well as in any further judicial proceedings, in relevant cases of violence. Furthermore, ECRI recommends that in order to address the problem of underreporting the authorities implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the LGBT community.

4. Integration policies

49. The country does not have an overall integration policy. However, it has a strategy for integrated education, which concerns mainly the two largest ethnic communities. There are also provisions for promoting the integration of smaller ethnic communities (“those that constitute less than 20% of the total population”), as well as an integration strategy for the Roma (one of these communities), and one for refugees, persons who have been granted subsidiary protection and other foreigners.

- **Integration in the education system**

50. In spite of ECRI’s 2010 recommendation⁶⁴, ethnic divisions are still perpetuated by the education system because schools are often divided along linguistic and ethnic lines.⁶⁵ Pupils of different ethnic backgrounds are often accommodated in separate buildings, reducing mutual contact.⁶⁶ There are also different history curricula, which influences the understanding of the roles played by the different ethnic communities in the past and leads to prejudice against other ethnic groups.⁶⁷ In order to address these problems, a strategy for Integrated Education⁶⁸ was prepared by the authorities with support from the OSCE High Commissioner on National Minorities in 2010.⁶⁹ However, the strategy has not been followed up by an Action Plan; there is no implementation timeline; nor is there an evaluation mechanism. The authorities have informed ECRI that progress is very slow, in spite of some measures already taken, such as the setting up of teams for inter-ethnic integration in education in all primary and secondary schools. While in some schools joint regular English classes and art education classes have taken place, initiatives under this strategy have so far been mainly covering extra-curricular activities, such as joint theatre or music projects. The overall implementation of the strategy has also been hampered by limited funding.⁷⁰ The authorities informed ECRI that in the 2016 state budget,

⁶³ See also § 31 on the National Strategy for Equality and Non-Discrimination.

⁶⁴ § 37 of ECRI’s 4th report.

⁶⁵ Nearly all pupils from the two largest ethnic communities study in their language. Source: State Statistical Office of the Republic of Macedonia (2012).

⁶⁶ Barbieri et al. (2013): 3.

⁶⁷ OSCE (2010): 21.

⁶⁸ Ministry of Education and Science (2010).

⁶⁹ McGlynn et al. (2013): 127.

⁷⁰ Ibid.: 3; and European Commission (2014): 13 and 48.

2 000 000 MKD (approx. 33 000 €) have been allocated for the implementation of activities for inter-ethnic integration in education.

51. ECRI recommends that the authorities revive the strategy for Integrated Education by developing a corresponding Action Plan, together with all relevant stakeholders, and provide adequate funding for its implementation.

- **Historical Ethnic Minorities**

52. Besides the two largest ethnic communities⁷¹, there are several smaller historical ethnic groups in the country. The largest of these, according to the 2002 census, are Turks (3.9%), Roma (2.7%), Serbs (1.8%), Bosnians (0.8%) and Vlachs (0.5%).⁷² There is no overall integration strategy for these groups, but various instruments that aim at promoting their integration.⁷³ Article 4 of the 2001 Ohrid Framework Agreement (henceforth: Ohrid Agreement), for example, reiterates the principle of non-discrimination and equality of all citizens. On the other hand, the Ohrid Agreement also established a consociational political system in which the two largest ethnic groups can safeguard their interests, but smaller ethnic groups are potentially marginalised as a result. This necessitates additional measures for the integration of historical ethnic minorities, in particular in the field of public representation.

53. The 2008 Law for Promoting and Protecting the Rights of Communities which represent less than 20% of the Population is intended to address this gap. The Law provides for the right of these groups to equitable representation in public sector employment. A new legislative framework for the civil service and public employment was adopted in 2014 and is scheduled to be fully implemented by the end of 2015. It is supposed to streamline the recruitment process for all ethnic communities and establish a data collection system that monitors ethnic distribution of public sector employment. This data will be made public in order to promote transparency about the progress made and persisting problems with underrepresentation.⁷⁴

54. The Law also provides that at municipal level, committees for inter-ethnic relations made up of members of all ethnic groups present are to be established in locations where more than 20% of residents belong to ethnic groups other than the local majority population.

- *Shortcomings and gaps*

55. Despite some progress in implementing the right of smaller ethnic communities to equitable representation in the public sector, the Turkish, Roma, Bosnian, Serb and Vlach communities are still underrepresented at central and local level.⁷⁵ Further progress on this issue is hindered by the absence of effective measures to promote the representation of smaller communities in the public sector, for example through a quota, in the 2008 Law for Promoting and Protecting the Rights of Communities which represent less than 20% of the Population.

56. The committees for inter-ethnic relations could be an important mechanism for participation and integration, but their advice is not binding on local councils and

⁷¹ According to the 2002 census, approximately 64% of the population self-identified as Macedonians, and around 25% as Albanians. Source: State Statistical Office of the Republic of Macedonia (2004): Book IX, Table 13.

⁷² Ibid. – Percentage as part of the overall population. The figures are approximate and based on self-identification.

⁷³ ECRI considers that issues related to the right to express a separate identity can best be addressed in the context of the Framework Convention for the Protection of National Minorities (FCNM). See: Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2011).

⁷⁴ European Commission (2014): 8.

⁷⁵ Ibid.: 13.

they are not automatically represented in them, which often makes it uncertain as to whether their voice will even be heard by the local decision-making institutions. ECRI was informed by the authorities and by ethnic minority representatives that these shortcomings tend to result in a lack of interest in participating in the committees. Furthermore, the representatives of the various ethnic communities are appointed by the communities, not elected, which reduces transparency, participation and accountability. Usually, the committees do not receive any financial or administrative support, or training.

57. In the field of education, ECRI notes that minority pupils who attend a school in which there is not a sufficient number of children from the same minority to offer instruction in that group's language⁷⁶, are taught in either the Macedonian or the Albanian language. These pupils, many of whom do not fully master the respective language, are usually not offered additional language tuition. ECRI recalls that potential deficits in the language of instruction can affect a child's ability to follow the learning process, with negative effects for academic achievements and future professional opportunities. This hinders integration.
58. ECRI recommends that the authorities introduce a quota for smaller historical ethnic communities in the area of public sector employment and monitor its impact. The authorities should also promote and strengthen the work of the local committees for inter-ethnic relations by, inter alia, (i) granting them consultative participation status in local councils; (ii) ensuring that the committee members are elected by their respective constituencies; and (iii) providing financial and administrative support, as well as capacity-building. Furthermore, ECRI recommends that the authorities provide extra classes in the language of school instruction for pupils from historical ethnic minorities, where necessary.

- Roma

59. The 2014 – 2020 Roma Strategy focuses on five strategic areas: employment, education, housing, health and culture.⁷⁷ National Action Plans for the first four areas and for supporting Roma Women are to be adopted by the end of 2015. It is too early to assess the results of this strategy. However, it is not the first such initiative; it follows on the heels of other Roma strategies, including the Decade of Roma Inclusion 2005-2015, which have had some impact.⁷⁸
60. Progress has thus been made in the area of public sector employment, where the proportion of Roma has increased from 0.33% in 2005 to 2.56% in 2012.⁷⁹ The number of unemployed Roma who participated in an initiative to enhance their employability, such as training courses, also increased from 133 in 2010 to 612 in 2013; but the latter figure still only represented about 10% of all Roma who were registered as unemployed during that year (see also § 75). Such a low percentage is particularly problematic given that low levels of education and work-related skills are seen as the main obstacles to improving the employability of members of the Roma community.⁸⁰ It is therefore positive that the new strategy aims at increasing this figure to 50% by 2020.⁸¹

⁷⁶ Since 2001, each historical ethnic minority has the right to school instruction in its own language. Curricula exist in the Macedonian, Albanian, Turkish and Serbian languages. Instruction in the language of other minorities, such as Romani, Vlach or Bosnian is only available in very few primary schools. See: McGlynn et al. (2013): 126. - Concerning issues of mother tongue education, please see the reference to the work of the FCNM in footnote 73 above.

⁷⁷ Ministry of Labor and Social Policy (2014): 30. – During the visit, the authorities indicated, however, that the strategy would be extended to cover the period until 2024.

⁷⁸ Cf § 91 of ECRI's 4th report.

⁷⁹ Ministry of Labor and Social Policy (2014): 32.

⁸⁰ Ibid.: 33.

⁸¹ Ibid.: 30.

61. Low primary school attendance is an issue affecting the Roma community. The new Roma Strategy identifies three main reasons for it: (i) lack of relevant statistics on the number of Roma children of primary school age, also due to problems with the issuing of birth certificates (see § 75); (ii) children living in extreme poverty (see § 65); and (iii) lack of knowledge of the Macedonian language as a language of instruction (see § 57).⁸² Achievements of past interventions in the field of education include an increase from 2006/07 to 2011/12 by 27.5% (29.5% for female students) in the number of Roma children enrolled in secondary education.⁸³ Since 2010, measures such as financial assistance and free teaching materials, transport or dormitory accommodation were introduced to increase the opportunities for Roma children in different education cycles. In 2015, for example, there were 650 scholarships for Roma children in secondary schools. It seems that these measures have facilitated the increase in the enrolment of Roma children in recent years.⁸⁴ Furthermore, a quota for enrolment of Roma students in state institutions for higher education, combined with an exemption from fees, has been in existence since the late 1990s. In 2015, the quota was set at 4% of places and there were a total of 300 Roma students enrolled.
62. The new Roma strategy also aims at legalising 70% of irregular Roma settlements by 2017⁸⁵, while providing alternative temporary or permanent accommodation for the population whose settlements cannot be legalised.⁸⁶ The construction of new social housing units is a crucial factor in this part of the strategy. Already in 2012, a new rule was introduced which reserves 10% of new social housing units for Roma.
63. Key aspects of the new Roma strategy in the area of health care include the need to prevent violations of the rights of Roma patients due to unequal treatment by the health care workers, as well as overcoming the limited access of Roma to health insurance, due to frequent amendments to relevant legislation and the introduction of complex administrative procedures.⁸⁷ For both problems, the strategy includes awareness-raising and information campaigns, including training for Roma communities on how to report incidents of discriminatory treatment and the use of Roma Health Mediators to inform people about the rules of the public health care insurance system.⁸⁸
64. There are currently 12 Roma information centres in the country to facilitate access to education and social services. There are also mobile legal offices in Skopje to provide free legal aid and advice to Roma.⁸⁹
- *Shortcomings and gaps*
65. ECRI welcomes the efforts made by the authorities, but various shortcomings and gaps remain. Roma are still socially marginalised. The rate of poverty among Roma is approximately 2.5 times higher than at the national level.⁹⁰ Projects are ongoing in several priority areas, but they are driven mainly by donor funding as state budget allocations remain unchanged.⁹¹ While all the information offices

⁸² Ibid.: 48.

⁸³ Ibid.

⁸⁴ Decade of Roma Inclusion Secretariat (2012): 41.

⁸⁵ Ministry of Labor and Social Policy (2014): 62.

⁸⁶ Ibid.: 63.

⁸⁷ Ministry of Labor and Social Policy (2014): 68.

⁸⁸ Ibid.: 69.

⁸⁹ Decade of Roma Inclusion Secretariat (2012): 2.

⁹⁰ Ibid.: 1.

⁹¹ European Commission (2014): 13.

mentioned in § 64 are well frequented⁹², they do not seem to be able to address the causes for the social exclusion of Roma. This suggests that merely providing information, in the absence of structural changes, is insufficient. The following examples illustrate some of the problems many Roma face.

66. In spite of 10% of new social housing units being reserved for Roma (see § 62), the housing problem has not been resolved and around 28%⁹³ of Roma still live in informal settlements, such as Cicino Selo near Skopje, the living conditions of which have been criticised by the Ombudsman. Although forced evictions are not very common, they do occasionally occur.⁹⁴ Many Roma live in sheltered accommodation provided by the authorities, but the standards are often poor.⁹⁵ Prejudice and discrimination against Roma in the private housing market persist.
67. ECRI recommends that the authorities, as part of the new Roma Strategy, resolve the difficult housing situation of Roma, inter alia by providing sufficient and adequate social housing to vulnerable members of the Roma community; and by working with rental agencies and associations of private landlords to overcome prejudice against Roma in the private-sector housing market.
68. The life expectancy of Roma is ten years shorter than the national average and the infant mortality rate is almost double that of the general population, which is mostly related to poor living conditions⁹⁶, but also unequal access to medical care. The ECRI delegation visited the municipality of Šuto Orizari in the outskirts of Skopje which is mainly inhabited by Roma. The delegation was informed by a local non-governmental health care provider that, while the coverage with general practitioners is satisfactory, no gynaecologists are available in the entire area, in which some 8 000 women of reproductive age reside. Women have to register with gynaecologists in other parts of Skopje, who, however, often either refuse them, do not offer the full range of standard services to them or charge for their services, although they should be provided for free.⁹⁷ Similarly, pre-natal nurses are allegedly often not visiting pregnant Roma women in Šuto Orizari. The relevant health authorities were made aware of these problems and subsequently organised for gynaecological consultations in the municipality once a week with rotating doctors, but without providing the full range of standard services. In the two months prior to ECRI's visit, no gynaecologist was available at all to provide these weekly consultations. Similar shortcomings in the provision of gynaecological and pre-natal care have also been observed in other Roma settlements across the country.⁹⁸
69. ECRI recommends that the authorities ensure equal access to health care for members of the Roma community, in particular gynaecological and pre-natal services. To this end, sufficient and regular gynaecological consultations should urgently be put in place in Šuto Orizari. Furthermore, the health authorities should remind all medical practitioners that discrimination against patients due to their ethnicity is a breach of medical ethics. In proven cases, the health authorities should consider revoking the practitioner's license.
70. There is still a significant difference in illiteracy rates among adult Roma (17%) and non-Roma (4%).⁹⁹ This problem is reproduced as a result of low primary

⁹² Decade of Roma Inclusion Secretariat (2012): 2.

⁹³ Roma Decade Focal Point Macedonia (2014): 11.

⁹⁴ MHC (2014): 3.

⁹⁵ European Roma and Travellers Forum (2015): 11.

⁹⁶ European Roma Rights Centre (no year): 9.

⁹⁷ Women also need a referral from a gynaecologist in order to receive relevant treatment in public hospitals.

⁹⁸ Ministry of Labor and Social Policy (2014): 66.

⁹⁹ European Roma and Travellers Forum (2015): 5.

school attendance among Roma children. The increase from 2006/07 to 2011/12 in the number of Roma children who completed primary education was only a meagre 0.84%.¹⁰⁰ Furthermore, in 2015 only an estimated 4% of Roma children attended pre-school education (1.5% in 2005).¹⁰¹ Such low pre-school attendance rates are not conducive for increasing the enrolment rates in primary education.¹⁰²

71. The problem of placing Roma children in special needs schools, which was the subject of one of ECRI's 2010 priority recommendations¹⁰³, still persists. Researchers found that in 2011, nearly 50% of Roma children placed in such schools should have stayed in regular schools.¹⁰⁴ The Ministry of Education informed the ECRI delegation that in 2015, 37% of children in special needs schools were Roma, who make up less than 3% of the country's population. According to the authorities, the system currently used for directing children to special needs schools will be assessed and the work of the relevant commissions standardised and improved. While this process has been initiated, no concrete steps or results are visible at the moment.¹⁰⁵
72. ECRI repeats its recommendation that the authorities, as a matter of urgency, stop any practice of improperly sending Roma children to educational facilities for pupils with a mental disability and that children already affected by this practice are integrated into mainstream schools. Furthermore, ECRI recommends that the authorities ensure that funding is made available to carry out all necessary measures, as identified in the Roma Strategy, to increase substantially the educational attendance rates among Roma pupils, in particular in pre- and primary schools, and bring it in line with the national average.
73. In spite of the achievements mentioned in § 60 and ECRI's 2010 recommendation¹⁰⁶, there is little overall improvement in the unemployment rate of Roma¹⁰⁷, which the authorities still estimate to be between 60-70%, and even higher among Roma women. This is more than twice as high as the national average of 26%. The authorities acknowledged to the ECRI delegation that a shortage of staff and financial resources in the public Employment Agency limits the establishment of individual skill profiles and tailor-made training activities. Although this is not only a problem for Roma alone, they are disproportionately affected due to their already existing marginalisation in the labour market.
74. ECRI recommends that the authorities provide sufficient resources to the public Employment Agency to enable it to give the necessary support to unemployed members of the Roma community in the form of skills assessments and relevant training opportunities.
75. In spite of ECRI's 2010 recommendation¹⁰⁸ finally to resolve the issue of lack of personal documents, the problem still persists. The Strategy for Intensifying the Social Inclusion of Roma in the System of Social Protection 2012-2014 marked an increase in official attention to the issue of personal documentation, but has not solved the problem. Lack of documents continues to prevent many Roma

¹⁰⁰ Ministry of Labor and Social Policy (2014): 47.

¹⁰¹ Ibid.: 47.

¹⁰² Cf. § 49 of ECRI's 4th report.

¹⁰³ § 48 of ECRI's 4th report.

¹⁰⁴ Decade of Roma Inclusion Secretariat (2012): 41.

¹⁰⁵ ECRI was informed by the authorities that in the 2012/13 school year, 30 Roma pupils benefitted from the practice of including children with special educational needs also in regular classes. In the 2013/14 school year, this number increased to 44 Roma children.

¹⁰⁶ § 53 of ECRI's 4th report.

¹⁰⁷ Ministry of Labor and Social Policy (2014): 32.

¹⁰⁸ §§ 94-96 of ECRI's 4th report.

from enrolling their children in school (see § 61), from registering with the employment agency (see § 60)¹⁰⁹, or from voting.¹¹⁰ The ECRI delegation was informed by several NGOs, that in particular the issuing of birth certificates is problematic due to insufficient information sharing between hospitals and local registry offices, which often causes problems when parents cannot produce the necessary documents or evidence.

76. ECRI strongly recommends, in line with its previous recommendation on this matter, that the authorities pursue their efforts fully and finally to settle the problem of access to personal documents. Furthermore, information sharing between hospitals and local registry offices should be improved to avoid problems with the issuing of birth certificates.

- **Refugees and other non-nationals**

77. The Ministry of Labour and Social Policy, adopted an Integration Strategy for Refugees and Foreigners for the period 2008-2015, followed by a National Action Plan for its implementation, which provided for integration support to refugees and beneficiaries of subsidiary protection. These measures were primarily intended for Roma, Ashkali and Egyptians who were forcibly displaced from Kosovo¹¹¹ in 1999. The support consisted chiefly of access to social housing and vocational training activities to promote the integration into the labour market. As part of the implementation of the strategy, the social security legislation was amended in 2010 to provide access to social security benefits for refugees and beneficiaries of subsidiary protection on an equal footing with nationals. This also includes housing allowances in the form of rental subsidies. In 2012, the health insurance legislation was amended to grant these two groups full access to the health care system. They also have access to the education system and the labour market. ECRI notes the efforts made by the authorities in this respect.

78. A new Integration Strategy for Refugees and Foreigners has since been drafted and is in the process of being finalised.¹¹² The authorities have informed ECRI that, while the previous strategy focused on the provision of basic services, the new strategy will cover a broader spectrum and also include language classes (which were not part of the old strategy, because persons from Kosovo did not face a language barrier), an accreditation system for foreign diplomas, which will also benefit other foreigners besides protected persons, and a stronger focus on community level integration by involving and supporting municipalities in their integration efforts. In order to streamline these processes, one-stop centres for all foreigners are planned.

- *Shortcomings and gaps*

79. The planned evaluation of the 2008-2015 Integration Strategy was not carried out. ECRI also notes that persons whose application for refugee or subsidiary protection status failed, but whose presence in the territory of the state is officially tolerated because they cannot return to their country of origin at the moment, remain excluded from the social security system. There are also no plans to change this situation with the new Integration Strategy. Insufficient attention is also paid to the integration of the second generation of persons forcibly displaced from Kosovo in 1999 (see § 77). The new integration strategy does not seem to contain effective measures to ensure their integration.

¹⁰⁹ European Roma Rights Centre (no year): 8.

¹¹⁰ European Roma Rights Centre (2015a) and (2015b).

¹¹¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

¹¹² It remains to be decided whether it will cover the period 2016-2020 or a 10-year period until 2025.

80. Furthermore, the new Integration Strategy does not contain any contingency plans for how integration programmes could deal with a sudden upsurge in the number of protected persons which could arise as a result of the current migration crisis in Europe, which already affects the country with a high number of migrants transiting it on a daily basis.

81. ECRI recommends that the authorities commission an independent external evaluation of the 2008-2015 Integration Strategy for Refugees and Foreigners and use its findings to guide the implementation and, if necessary, readjustment of the new Integration Strategy. Furthermore, ECRI recommends that the authorities include in the new Integration Strategy (i) provisions for granting access to social security to persons whose applications for refugee or subsidiary protection status have failed, but whose presence in the country is officially tolerated; and (ii) contingency plans for a sudden upsurge in the number of refugees and other protected persons.

II. Topics specific to “the former Yugoslav Republic of Macedonia”

1. Interim follow-up recommendations of the fourth round

82. The three interim follow-up recommendations from ECRI’s fourth round report are discussed in the relevant thematic sections above (see §§ 6-14, § 31 and §§ 71-72).

2. Racial profiling by the border police

83. ECRI received information from several human rights organisations that the country’s border police uses racial profiling against members of the Roma community during controls of persons departing from the country at land border crossings and airports. The MHC carried out a situation testing, which showed that only Roma were subjected to in-depth questioning and inspection of their relevant documents when a coach tried to exit the country. The authorities confirmed that this method is being employed by the border police with a view of ensuring the strict adherence to the European Union’s travel and immigration rules, which the country agreed to enforce as part of the visa-liberalisation agreement it concluded with the European Union. The authorities insist that all Roma who possess the necessary documents and proof of financial means, are allowed to travel. During a meeting with the ECRI delegation, it became evident that, in spite of trainings received, the border police did not seem to be aware of the discriminatory impact of racial profiling and did not have any intention of stopping its use.¹¹³

84. ECRI recommends that the authorities ensure that the country’s border police force receives adequate training to be able to carry out its duties under the visa-liberalisation regime with the European Union without applying racial profiling.

3. Discrimination on religious grounds

85. In spite of ECRI’s previous recommendation in its 2010 report (§ 101), the authorities have still not registered the Ohrid independent Orthodox Archbishopric or the Bektashi community of Tetovo. In 2014, a total of five applications for registrations were rejected, of which four originated from different Orthodox Christian churches.¹¹⁴ It appears that the authorities insist on not registering other Orthodox Christian groups, besides the already recognised Macedonian Orthodox Church (MOC-OA). To this end, the authorities rely on what appears to

¹¹³ The authorities informed ECRI that the Ministry of Internal Affairs organises trainings for police officers who are working at the border, in accordance with the EU Frontex Core curriculum for border guards. These trainings are said to include elements on human rights, including the fight against discrimination.

¹¹⁴ The four rejected Orthodox religious groups were: The Greek Orthodox Archbishopric of the Patriarchy of Pec, the Church of Orthodox Unity, the Church of the True Orthodox Christians and the True Monastic Community.

be an excessively formalistic interpretation of the legal provision which stipulates that names and doctrines of religious organisations which wish to register must differ from those of already registered groups. ECRI would like to draw the authorities' attention to the case law of the European Court of Human Rights¹¹⁵ according to which member States are to refrain from attempting to enforce unity within a religion. The fact that there are several Orthodox Christian churches in the country cannot be a legitimate reason for refusing to register more than one, regardless of proximity of names and doctrines.

86. ECRI urges the authorities to settle, without any further delay, the issue of registration of religious minority groups. No excessive formalism should prevent their registration.

4. Issues concerning the effectiveness of independent authorities entrusted with the fight against racism and racial discrimination, as per ECRI's General Policy Recommendations Nos. 2 and 7

87. In the office of the Ombudsman, 17 positions have been vacant for several years as a result of a recruitment stop in the public sector due to financial constraints. These positions include three out of the four Deputy-Ombudsman positions provided for in the law establishing the Ombudsman. This serious shortage of staff affects the ability of the Ombudsman to carry out his work.

88. The law establishing the Commission for Protection against Discrimination does not contain a provision of secretarial support staff to the Commission. As the Commissioners are carrying out their functions in addition to their regular employment, the absence of administrative support impedes the effectiveness of their work.

89. ECRI recommends that the authorities fill all the vacant positions in the Ombudsman's office as a first step towards ensuring that the office is adequately staffed in proportion to its workload. In this connection, the authorities should also provide secretarial support staff to the Commission for the Protection against Discrimination.

5. Policies to combat discrimination and intolerance against LGBT persons¹¹⁶

- Data

90. There are no statistics on the size of the LGBT population in the country and only very limited official information on LGBT issues, as there are no official measures in place to collect and analyse data on discrimination on grounds of sexual orientation or gender identity.¹¹⁷ This results in an absence of, for example, of official data or studies on discrimination of LGBT persons in the fields of employment (see also § 101 below), housing or health services. Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. It is evident that without such information there can be no solid basis for developing and implementing policies to address intolerance towards and discrimination against LGBT persons.

¹¹⁵ European Court of Human Rights (1999), *Serif v. Greece* (Application no. 38178/97) Judgment; in particular § 52.

¹¹⁶ Concerning the definition of LGBT cf. Council of Europe, *Discrimination based on sexual orientation and gender identity in Europe 2011*: 21 and 139 et seq.

¹¹⁷ See also: Danish Institute for Human Rights / COWI (2009): 3 and 5-6.

- **Legislation**

- *Same-sex partnerships*

91. There is no possibility to register same sex partnerships in the country. A draft Law on Registered Partnerships was rejected.¹¹⁸ On the contrary, in January 2015, the Parliament adopted constitutional amendments which ban same-sex marriage, as well as creating constitutional barriers for any future legislation aiming at introducing same-sex civil unions.
92. ECRI believes that the absence of recognition of same-sex partnerships can lead to various forms of discrimination in the field of social rights. In this regard, ECRI draws the attention of the authorities to the Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.¹¹⁹
93. ECRI would also like to draw the authorities' attention to the judgment of the European Court of Human Rights in the case of *Oliari and Others v. Italy*, in which the Court found that although Article 12 of the European Convention on Human Rights did not impose an obligation on governments to grant a same-sex couple access to marriage, the absence of a legal framework allowing for recognition and protection of their relationship violated, in the case of the Italian legal order¹²⁰, their rights under Article 8 of the Convention.¹²¹
94. ECRI recommends that the authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live.

- *Gender reassignment*

95. There are no clear provisions in the legislation providing for transgender persons to change their name or gender in identity documents. While the authorities informed ECRI of one case in which such changes were made, several civil society organisations described the practice as arbitrary. Furthermore, ECRI notes that there are also no regulations clarifying whether the cost of gender reassignment treatment can be covered by the public health care system.
96. ECRI would like to encourage the authorities to make use of existing decisions and guidance developed by various bodies of the Council of Europe in order to establish criteria for regulating the procedure for gender reassignment.¹²²
97. ECRI recommends that the authorities regulate the procedure and conditions of gender reassignment, as well as the issuing of new identity cards to persons who have undergone gender reassignment surgery.

¹¹⁸ Ibid., p. 15.

¹¹⁹ Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)5, in particular §§ 24 and 25.

¹²⁰ ECRI recalls that in *Vallianatos and Others v. Greece* the ECtHR had found a violation of Article 14 of the European Convention on Human Rights taken in conjunction with Article 8 thereof because heterosexual couples were the only ones who could conclude civil partnerships provided for by national law. It also notes that the finding of violation of Article 8 in *Oliari and Others v. Italy* was not based on the fact that national law discriminated against same-sex couples.

¹²¹ ECtHR (2015), *Oliari and Others v. Italy* (Applications nos. 18766/11 and 36030/11) Judgment.

¹²² In particular: relevant judgments of the ECtHR, such as: ECtHR (2015), *Y.Y v. Turkey* (Application no.14793/08) Judgment; and ECtHR (2002), *Goodwin v. UK*, (Application no. 28957/95) Judgment [GC]; Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)5, §§ 21,22, and 23; Council of Europe, Sexual Orientation and Gender Identity unit (2015), *Protecting human rights of transgender persons - A short guide to legal gender recognition*; and Council of Europe, Commissioner for Human Rights (2009), *Human Rights and Gender Identity*.

- **Discrimination against LGBT persons in key areas of social life**

98. Social acceptance of LGBT persons is still very low in the country. A study conducted in 2009 by the Danish Institute for Human Rights and others for the Council of Europe and the EU Agency for Fundamental Rights, describes the general attitude towards LGBT persons as negative and hostile. As a result, individuals belonging to these groups tend to conceal their sexual orientation.¹²³ In 2007, a research project on the inclusiveness of society showed that 62.2% of the participants would not tolerate same-sex couples as their neighbours.¹²⁴ Moreover, according to a survey conducted in 2002 by the Centre for Civil and Human Rights, 80% of the country's population believed that homosexuality was a psychiatric disorder and a threat. The same survey revealed that 65% of the participants perceived homosexuality as a criminal offence.¹²⁵
99. Discriminatory contents in textbooks and a lack of institutional reactions to this problem have been observed for some time.¹²⁶ The Commission for Protection against Discrimination has looked into several complaints concerning textbooks in the past. NGOs report, however, that the decisions of the Commission on this issue are inconsistent: in one case it found discrimination and subsequently the textbooks were changed, while in others it did not find similar texts to be discriminatory. In the textbooks that the Commission found to be discriminatory, the parts dealing with sexual orientation were deleted completely, instead of being revised with a view to promote tolerance vis-à-vis LGBT persons.
100. In 2015, the public Ss. Cyril and Methodius University of Skopje commenced a new 3-year graduate programme in family studies, which replaced the hitherto existing programme in gender studies. Civil society groups met by the ECRI delegation pointed out that textbooks used in this new course describe homosexuality as deviant behaviour and a source of social problems akin to prostitution, drug use and divorce.
101. NGOs report that LGB persons are typically not outing themselves in the workplace, while transgender persons face difficulties obtaining employment in the first place when their transgender status is visible.
102. In spite of the scale of the problem of intolerance vis-à-vis LGBT persons, there are no awareness-raising programmes in place. The Ministry of Labour and Social Affairs informed the ECRI delegation that there had been plans, several years ago, to conduct a survey of different areas in which LGBT persons face discrimination. This survey, however, has not been carried out.
103. ECRI recommends that the authorities carry out an independent comprehensive study on all forms of discrimination against LGBT persons jointly with the LGBT community. This study should also pave the way towards preparing and adopting an action plan to end such forms of discrimination.

¹²³ Danish Institute for Human Rights / COWI (2009): 7.

¹²⁴ Ibid., p. 5.

¹²⁵ Ibid., p. 3.

¹²⁶ Ibid., p. 18.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of “the former Yugoslav Republic of Macedonia” are the following:

- ECRI recommends that the authorities fill all the vacant positions in the Ombudsman’s office as a first step towards ensuring that the office is adequately staffed in proportion to its workload. In this connection, the authorities should also provide secretarial support staff to the Commission for the Protection against Discrimination.
- ECRI recommends that the authorities carry out an independent comprehensive study on all forms of discrimination against LGBT persons jointly with the LGBT community. This study should also pave the way towards preparing and adopting an action plan to end such forms of discrimination.

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. (§5) ECRI recommends that the authorities bring the country's Criminal Code, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should explicitly (i) criminalise public racist insults and defamations; (ii) add sexual orientation and gender identity to the list of enumerated grounds in Articles 39(5) and 319; and (iii) introduce a general provision to criminalise the creation or the leadership of a group which promotes racism; support for such a group; and participation in its activities.
2. (§ 10) ECRI recommends that the authorities bring the country's civil and administrative law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should amend the Law on Prevention and Protection against Discrimination with the aim of including (i) sexual orientation and gender identity into the enumerated grounds; (ii) segregation and discrimination by association; (iii) a possibility for associations that have a legitimate interest in combating racism and racial discrimination to initiate a court case on behalf of a victim and to bring civil cases or intervene in administrative cases even if a specific victim is not referred to; and (iv) an obligation on public authorities to promote equality and prevent discrimination and to ensure that contractors or partners they work with adhere to non-discrimination principles.
3. (§ 14) ECRI recommends that the authorities change the status of the Commission for protection against discrimination with a view of making it fully independent. Furthermore, ECRI recommends that the authorities bring the mandate and powers of the Commission and the Ombudsman, in general, in line with ECRI's GPR No. 7. They should, in particular, grant both institutions the right to initiate court cases even when a specific victim is not referred to.
4. (§ 32) ECRI recommends that the authorities take urgent measures to tackle the growing problem of racist and homo-/transphobic hate speech, in particular by i) stepping up the training activities on hate speech for law enforcement officers, prosecutors and judges; ii) introducing administrative sanctions for hate speech in the Law on Audio and Audiovisual Media Services of 2013; iii) providing the regulatory authority for audio and audio-visual media services with the possibility of issuing warnings or demanding apologies in cases of racist or homo-/transphobic hate speech and related breaches of professional journalistic standards and ethics; iv) setting up a system of information sharing through which the regulatory authority for audio and audio-visual media services receives information from prosecutors and courts concerning cases that it forwarded in order to enable the regulatory authority to improve and optimise its media monitoring activities; and v) establishing effective regulatory bodies, while respecting the principle of media independence, that can monitor incidents of hate speech in print media and internet services. Furthermore, ECRI recommends that an evaluation of past initiatives to prevent hate speech is carried out with a view of building on existing efforts and expanding good practices, especially in the media and education sectors.
5. (§ 33) ECRI also recommends that the authorities promote condemnation of hate speech and counter-speech by high-ranking officials and politicians. All political parties in the country should condemn hate speech and call on their members and followers to abstain from using it.
6. (§ 48) ECRI recommends that existing training initiatives on racist and homo-transphobic violence for members of law enforcement agencies and the

judiciary are expanded. ECRI also recommends that the authorities ensure that a possible existence of a bias motivation is consistently taken into consideration in police reports and investigations, as well as in any further judicial proceedings, in relevant cases of violence. Furthermore, ECRI recommends that in order to address the problem of underreporting the authorities implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the LGBT community.

7. (§ 51) ECRI recommends that the authorities revive the strategy for Integrated Education by developing a corresponding Action Plan, together with all relevant stakeholders, and provide adequate funding for its implementation.
8. (§ 58) ECRI recommends that the authorities introduce a quota for smaller historical ethnic communities in the area of public sector employment and monitor its impact. The authorities should also promote and strengthen the work of the local committees for inter-ethnic relations by, inter alia, (i) granting them consultative participation status in local councils; (ii) ensuring that the committee members are elected by their respective constituencies; and (iii) providing financial and administrative support, as well as capacity-building. Furthermore, ECRI recommends that the authorities provide extra classes in the language of school instruction for pupils from historical ethnic minorities, where necessary.
9. (§ 67) ECRI recommends that the authorities, as part of the new Roma Strategy, resolve the difficult housing situation of Roma, inter alia by providing sufficient and adequate social housing to vulnerable members of the Roma community; and by working with rental agencies and associations of private landlords to overcome prejudice against Roma in the private-sector housing market.
10. (§ 69) ECRI recommends that the authorities ensure equal access to health care for members of the Roma community, in particular gynaecological and pre-natal services. To this end, sufficient and regular gynaecological consultations should urgently be put in place in Šuto Orizari. Furthermore, the health authorities should remind all medical practitioners that discrimination against patients due to their ethnicity is a breach of medical ethics. In proven cases, the health authorities should consider revoking the practitioner's license.
11. (§ 72) ECRI repeats its recommendation that the authorities, as a matter of urgency, stop any practice of improperly sending Roma children to educational facilities for pupils with a mental disability and that children already affected by this practice are integrated into mainstream schools. Furthermore, ECRI recommends that the authorities ensure that funding is made available to carry out all necessary measures, as identified in the Roma Strategy, to increase substantially the educational attendance rates among Roma pupils, in particular in pre- and primary schools, and bring it in line with the national average.
12. (§ 74) ECRI recommends that the authorities provide sufficient resources to the public Employment Agency to enable it to give the necessary support to unemployed members of the Roma community in the form of skills assessments and relevant training opportunities.
13. (§ 76) ECRI strongly recommends, in line with its previous recommendation on this matter, that the authorities pursue their efforts fully and finally to settle the problem of access to personal documents. Furthermore, information sharing between hospitals and local registry offices should be improved to avoid problems with the issuing of birth certificates.

14. (§ 81) ECRI recommends that the authorities commission an independent external evaluation of the 2008-2015 Integration Strategy for Refugees and Foreigners and use its findings to guide the implementation and, if necessary, readjustment of the new Integration Strategy. Furthermore, ECRI recommends that the authorities include in the new Integration Strategy (i) provisions for granting access to social security to persons whose applications for refugee or subsidiary protection status have failed, but whose presence in the country is officially tolerated; and (ii) contingency plans for a sudden upsurge in the number of refugees and other protected persons.
15. (§ 84) ECRI recommends that the authorities ensure that the country's border police force receives adequate training to be able to carry out its duties under the visa-liberalisation regime with the European Union without applying racial profiling.
16. (§ 86) ECRI urges the authorities to settle, without any further delay, the issue of registration of religious minority groups. No excessive formalism should prevent their registration.
17. (§ 89) ECRI recommends that the authorities fill all the vacant positions in the Ombudsman's office as a first step towards ensuring that the office is adequately staffed in proportion to its workload. In this connection, the authorities should also provide secretarial support staff to the Commission for the Protection against Discrimination.
18. (§ 94) ECRI recommends that the authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected in order to address the practical problems related to the social reality in which they live.
19. (§ 97) ECRI recommends that the authorities regulate the procedure and conditions of gender reassignment, as well as the issuing of new identity cards to persons who have undergone gender reassignment surgery.
20. (§ 103) ECRI recommends that the authorities carry out an independent comprehensive study on all forms of discrimination against LGBT persons jointly with the LGBT community. This study should also pave the way towards preparing and adopting an action plan to end such forms of discrimination.

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APPENDIX: GOVERNMENT'S VIEWPOINT

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in "the former Yugoslav Republic of Macedonia"

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of "the former Yugoslav Republic of Macedonia" 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 9 December 2015, date of the examination of the first draft).

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

**Comments of the Government of the Republic of Macedonia
ECRI Fifth monitoring cycle**

I Common topics

1. Legislation against racism and racial discrimination

Criminal law provisions

Paragraph 2

Article 319 of the Criminal Code contains "language and citizenship". At the same time, also "gender" is considered grounds for discrimination contained in the said incriminations under Articles 39 (5), 319 and 394-d.

Paragraph 4 and 5

The offense under Article 319 reads: Inciting hatred, discord, or intolerance on national, racial, religious, or other discriminatory grounds:

1) Whoever by force, mistreatment, endangering the security, by ridicule of national, ethnic, religious and other symbols, by burning, destroying or otherwise damaging the flag of the Republic of Macedonia or flags of other countries, by damaging objects belonging to others, by desecrating monuments, graves or in other discriminatory way, directly or indirectly, shall cause or incite hatred, discord or intolerance based on race, color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief, other beliefs, education, political affiliation, personal or social status, mental or physical disability, age, family or marital status, property status, health condition, or on any other grounds, provided by law or by ratified international treaty, shall be punished with imprisonment of one to five years.

2) A person who shall commit the offence under paragraph (1) of this Article by abusing his position or authority, or if because of these offences, riots and violence against people or property damage of large-scale have occurred, shall be punished with imprisonment of one to ten years.

With regard to the findings that there is no provision that criminalizes forming or leading a group that promotes racism, supporting such a group and participation in it, the Government point out the following: Article 394 defines the offence of Criminal association, which criminalizes the actions of:

1) A person who shall create a group or gang which aims committing offenses for which a perpetrator may be imposed a sentence of three years or more, shall be punished with imprisonment of one to ten years.

2) The member of the group or gang shall be punished with imprisonment from six months to five years.

3) The member of the group or gang who discloses the group or the gang, before committing a crime as its member or for it, shall be pardoned.

Based on the foregoing it comes out that creating a group or gang that promotes racism as well as a member of such a group, in accordance with Recommendation no. 7 ECRI, is criminalized under the said criminal offense under Article 394 of the Criminal Code of the Republic of Macedonia and in relation to Article 319.

IV Integration policies

-Integration in the education System

Paragraph 50

In the part alleging that students learn the subject of history according to different curricula, it should be said that the history curriculum is the same for all pupils; but in its implementation, there is the appearance of different interpretations. Likewise,

as regards the Strategy for Integrated Education, it is alleged that the Strategy has not been followed by an Action Plan; this does not correspond to the actual situation; namely, the Strategy includes an Action Plan with defined activities and deadlines. The dynamics of implementation of activities does not follow the terms set out in the Action Plan of the Strategy.

Paragraph 61

About the low percentage of inclusion of Roma children in primary education, as an attachment the Ministry of Education and Science cites statistics for three school years showing that the number of Roma pupils enrolled in primary education is high and it is constant during the transition from one school year to another; in other words, such number or the dropout rate is low.

2013/14 school year

- Total number of Roma pupils in primary education - **9615 (5026 boys and 4589 girls)**;
- Total number of Roma pupils enrolled in first grade of primary education - **1297 (699 boys and 598 girls)**.

2014/15 school year

- Total number of Roma pupils in primary education - **9506 (4846 boys and 4660 girls)**;
- Total number of Roma pupils enrolled in first grade of primary education - **1158 (567 boys and 591 girls)**.

2015/16 school year

- Total number of Roma pupils in primary education - **8737 (4502 boys and 4235 girls)**;
- Total number of Roma pupils enrolled in first grade of primary education - **1181 (647 boys and 534 girls)**.

In this school year (2015/16), there has been a decrease in the total number of Roma pupils in primary education because, according to the new concept of nine-year compulsory primary education, as of this school year nine-year primary schools have only one grade as such, while in the previous year there were two eighth grades (one according to the old eight-year and one according to the new nine-year concept), two seventh grades and so on, depending on the school year. Proof of this is the number of enrolled Roma first graders, a number that does not deviate significantly from previous school years.

In addition, the confirmation that the transition rate is high, is further illustrated by the transition rate of pupils completing primary education and continuing or enrolling in secondary education.

In the 2013/14 school year, out of **700** Roma pupils who successfully completed primary education, **79%** were enrolled or continued their education in secondary school.

In the 2014/15 school year the rate increased by **4.04%**; in other words, out of the total number of Roma pupils that completed their primary education (**631**), **83.04%** were enrolled or continued their education in secondary school.

Paragraph 70

Regarding the part that states that only 0.84% of the pupils successfully completed their primary education in the 2006/07-2011/12 period, the said figure of 0,84% refers only to preschool education. For primary education itself, data is listed in

Item 61, and there one can see a high percentage of successful completion of primary education and transition to secondary education.

Paragraph 71

As regards the number of Roma pupils that attend schools for children with special educational needs, a series of measures were undertaken whereby, according to the findings in the report, the number of Roma pupils in these schools decreased by **13% (from 50% in 2010 to 37% in 2015)**.

In 2015, the Government of the Republic of Macedonia set up a special working group made up of representatives from the Ministry of Education and Science, Ministry of Labor and Social Policy and Ministry of Health on the issue of education of Roma children with special educational needs; the members of this working group undertook a series of measures that report fails to mention, i.e., that an expert commission was set up to assess the abilities of these children. This commission recently completed the re-categorization of all Roma children included in special schools in order to determine whether these children should attend special schools or need to be redirected to attend regular schools. The commission report and its findings will be ready in the near future and appropriate measures will be undertaken based on the report. At the same time, work on adopting new rules for categorization is also in progress.

Concerning such statistics, in the 2014/15 school year, out of all enrolled pupils in special schools 26.5% were Roma children, while in special classes for children with special educational needs based in regular schools Roma children made up 37.8% of all such pupils. Hence, such re-categorization was conducted for all these children in order to determine the true diagnosis of the children.

Paragraph 77-81

In 2015, there was a process of evaluation of the 2012-2015 Equality and Non-Discrimination Strategy, involving several in-line institutions, social partners, civil society organizations, and international organizations involved in the implementation of the Strategy. The evaluation information and findings have been used as basis for drafting a new Equality and Non-Discrimination Strategy covering the 2016-2020 period. The new Strategy has been drafted by a special working group, composed of representatives of all in-line institutions and other stakeholders. The draft Strategy defines its mission to be: "efficient protection against discrimination and respect for the principle of equal opportunities and prohibition of discrimination of any person and /or groups of persons on grounds of their personal characteristics, especially vulnerable social groups (ethnic communities, women, the LGBTI community, persons with mental and physical disabilities, the elderly, children, refugees, underprivileged persons, internally displaced persons, and other vulnerable groups, persons belonging to religious communities and any other person that has been treated differently without any justified grounds and without a legitimate purpose)." As regards the ECRI recommendation that the authorities commission an independent external evaluation of the 2008-2015 Integration Strategy for Refugees and Foreigners, the Ministry of Labor and Social Policy would like to inform that the Ministry has already made an internal evaluation of the Strategy.

As regards the recommendation that persons whose refugee status in the Republic of Macedonia has ceased be included in the new Integration Strategy for Refugees and Foreigners and thus be granted access to social protection rights, persons whose status in the Republic of Macedonia has not been determined cannot be part of the new Integration Strategy for Refugees and Foreigners and cannot have access to social protection rights, which are envisaged under relevant laws.

As regards the recommendation for contingency plans for a sudden upsurge in the number of refugees and other protected persons, Republic of Macedonia has prepared contingency plans for a large scale influx of refugees and other protected

persons. The plans are regularly updated in cooperation with the Crisis Management Centre, in line with the current development of the situation in the field.

II Topics specific to the Republic of Macedonia

1. Interim follow-up recommendations of fourth round

Paragraph 83 and 84

In conducting border control activities and procedures, police officers fully apply the provisions of the Law on Border Control of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 171 dated 30 December 2010) and specifically Article 2 paragraph 1 sub-paragraph 4; Article 2 paragraph 3 items 4 and 19; Articles 4, 8 and 13; Article 15 paragraph 4, as well as others of the Law listed.

Moreover, the Ministry of the Interior would like to underline that the aforementioned Law on Border Control has been fully brought in line with Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 (Schengen Borders Code).

In the everyday work, the national border police applies common guidelines, best practices and recommendations on border control as outlined in the European Commission's Schengen Handbook (Practical Handbook for Border Guards), issued on 6 November 2006.

As regards trainings, the Ministry of the Interior stress that such trainings are being conducted on three levels in the Republic of Macedonia, all in keeping with the Core Curriculum for Border Guard Training issued by the FRONTEX European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union established under Regulation (EC) No. 2007/2004 of the European Parliament and of the Council of 26 October 2004.

Paragraph 97

With regard to the recommendations referring to Gender Reassignment, when it comes to the issues surrounding the regulation of gender reassignment procedures and conditions, as well as issuing new identity cards to persons who had undergone gender reassignment surgery, the Ministry of the Interior would like to point to the following: In keeping with the Law on the National Identification Number of the Republic of Macedonia, the implementation of which is under the authority of the Ministry of the Interior, the national identification number represents a single individualized designation containing identity data of citizens and is composed of thirteen digits arranged in six groups, the fifth of which is a combination denoting the sex and ordinal number given to persons born on the same date (three digit number), being assigned on the basis of the data listed in the official birth certificates of any given person.

In line with the Law on Civil Registration of the Republic of Macedonia, the personal identification data of citizens are registered in the Registers of Births, the Registers of Marriages and Registers of Deaths, the keeping of which falls under the authority of the Civil Registry at the Ministry of Justice of the Republic of Macedonia.

Taking into account legal regulations and having in mind that all changes in the status of citizens are entered into the relevant National Registers, it can be concluded that if the Civil Registry at the Ministry of Justice files a Gender Reassignment Certificate, i.e. a Birth Certificate registering gender reassignment of a citizen to the Ministry of the Interior of the Republic of Macedonia, the Ministry of the Interior will adequately adopt a decision to assign a new national identification number aligned with the citizen's newly changed gender which will subsequently allow for new identification documents to be issued to the citizen to reflect that change.

