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# **ECRI REPORT ON SERBIA**

**(fifth monitoring cycle)**

Adopted on 22 March 2017

Published on 16 May 2017

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## FOREWORD

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

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

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

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

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

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

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

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 7 December 2016; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's second report on Serbia on 9 December 2010, progress has been made in a number of fields.**

The authorities have improved the protection against hate crime through a new provision making racist, homo- and transphobic motivation an aggravating circumstance. The Criminal Code (CC) also protects persons and organisations promoting equality and the Law on the Prohibition of Discrimination explicitly prohibits hate speech. The Commissioner for the Protection of Equality (CPE) has been provided with additional staff and appropriate premises.

In 2011, Radio Television of Serbia apologised to viewers for its role as a propaganda tool in the 1990s. In 2012, the Constitutional Court disbanded one racist, homo- and transphobic organisation. The Anti-Discrimination Strategy and Action Plan contain measures against hate speech and the parliament is in the process of adopting a code of conduct prohibiting its use. Journalists' associations adopted a Code of Ethics prohibiting hate speech and in 2012 a Press Council was established.

The High Technology Crime Department is increasingly focusing on cyber hate speech and in several police units officers have been designated as contact persons for LGBT persons. In the south of the country, a considerable number of police officers of Albanian origin have been recruited. In 2015, eight persons were arrested in relation to the Srebrenica crimes and in 2016 a National Strategy for the Prosecution of War Crimes was adopted. In 2010 and 2013, the parliament and the president apologised for the Srebrenica massacres.

The 2016 Roma strategy covers key integration issues and contains some quantified targets and indicators to measure progress. The vast majority of Roma at risk of statelessness have been registered and have received identity documents. Good practices have been developed for increasing school enrolment of Roma children and for rapidly intervening in cases of absenteeism. The authorities are mapping the infrastructure needs in Roma settlements and they have adopted strategic documents for improving the housing conditions of Roma.

The Anti-Discrimination Strategy provides for introducing legislation on registered partnerships for same-sex couples and on the change of name and gender of transgender persons. A considerable number of police and social welfare staff were trained on LGBT issues and an openly gay minister has recently been appointed.

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

Incitement to hatred against groups living outside Serbia is not punishable under Article 317 CC and participation in the activities of racist groups is also not always punishable. The adopted text on genocide denial is too narrow. Public authorities are not placed under a positive duty to promote equality and there is no law on free legal aid. The CPE lacks the power to take up cases ex officio and to request the production of documents.

ECRI is highly concerned about a continued rise in hate speech in Serbian public discourse, which is amplified by wide media coverage. Politicians and the media use inflammatory, pejorative and nationalistic language and regional tensions in the area of former Yugoslavia have risen sharply. The current public discourse is reminiscent of the hate speech used before the recent wars in the region and surveys show high levels of underlying social distance between different parts of the population. Hate speech is increasingly disseminated via the Internet; football hooligans and their organisations also contribute to spreading hatred.

The system of (self) regulation of the media is not working properly: the Press Council is too weak and social media operators do not prevent and remove hate speech. Many

offences are not reported to the police and the police are not always open to receiving complaints, in particular from LGBT persons and Roma. The application of the legislation against hate speech and violent hate crime is inefficient and there is no decisive action against the activities of racist, homo- and transphobic hooligan groups.

The high levels of homo- and transphobic violence regularly become visible at LGBT Pride Parades. Violence against Roma is recurrent and the prosecution and sentencing of genocide and other racist war crimes is progressing slowly. High-ranking persons are not prosecuted and many terrible war crimes remain unpunished. Due to the resulting impunity, people belonging to different communities live in fear of a new wave of such hate crime.

The different Roma strategies and action plans have not been implemented in various areas. Only 6% of Roma children are enrolled in pre-school; only 46% complete the compulsory eight-year primary education and just 13% secondary education. Only half as many Roma girls as Roma boys attend and complete secondary school. The figures for Roma living in settlements and in particular of those displaced from Kosovo<sup>1</sup> are even worse. The efforts to improve the distressing housing conditions of many Roma are far too small in size and 72% of all Roma settlements are still informal. In important parts of the public services, not a single Roma is employed; members of other minorities are also strongly underrepresented. Unemployment appears to be particularly high in some areas predominantly inhabited by minorities.

LGBT persons face high levels of prejudice and security is a daily concern for them. A considerable proportion of discrimination is committed by civil servants and public officials do not always promote understanding and tolerance towards LGBT persons.

**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.**

Serbia should bring its criminal, civil and administrative law in line with ECRI's General Policy Recommendation No. 7 and give the CPE the power to take up issues of discrimination ex officio.

The parliament and government should adopt codes of conduct prohibiting hate speech.<sup>\*</sup> Moreover, the authorities should initiate training for journalists, develop a strategy on combating cyber hate speech and reinforce (self-) regulation of media in order to prevent hate speech. The police and prosecution should designate contact persons for vulnerable groups, train them and build up regular dialogue with these groups. The recording, investigation and punishment of hate speech and violent hate crime should be improved and racist, homo- and transphobic hooligan groups should be banned. The authorities should efficiently implement the Strategy for the Prosecution of War Crimes and publicly acknowledge that the Srebrenica massacres constituted genocide.

The authorities should clearly distribute responsibilities and designate the financial and human resources for the implementation of the Roma strategy. Pre-school and school attendance and completion rates should swiftly be increased; particular focus should also be put on improving the housing conditions of Roma and on hiring a proportionate number of persons with minority background to the public services.<sup>\*</sup> Furthermore, the authorities should develop integration indicators and strengthen the collection of equality data.

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<sup>1</sup> 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.

<sup>\*</sup> This recommendation will be subject to a process of interim follow-up by ECRI not later than two years after the publication of this report.

The authorities should introduce registered partnerships for same-sex couples, regulate the change of name and gender of transgender persons, create a safe environment for LGBT persons and promote a culture of tolerance towards them.



## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism<sup>1</sup> and discrimination<sup>2</sup>

##### - Criminal law

1. The assessment of Serbia's criminal law shows that several essential elements of ECRI's General Policy Recommendation (GPR) No. 7 on National legislation to combat racism and racial discrimination have not yet been introduced into Serbian law. Article 317.1 of the Serbian Criminal Code (CC) criminalises incitement to national, racial or religious hatred or intolerance among the peoples and ethnic communities living in Serbia. This fails to meet the requirements of § 18a of GPR No. 7 in several respects: incitement to violence is not mentioned<sup>3</sup> and the grounds of skin colour, language, citizenship, ethnic origin, sexual orientation and gender identity are missing.<sup>4</sup> Moreover, while incitement to hatred towards individuals and towards groups living outside Serbia should also be punishable, this provision only protects against incitement to hatred among the "people and ethnic communities living in Serbia". Incitement to discrimination is punishable under Article 387.3 CC, which also fails to mention the full range of prohibited grounds listed in § 18 of GPR No. 7.
2. Racist, homo- and transphobic insults can be punished under Article 170 CC taken in conjunction with Article 54a CC, according to which hate based on race, religion, national or ethnic affiliation, sexual orientation or gender identity is considered an aggravating circumstance for an ordinary criminal offence (§ 21 of GPR No.7). Article 174 CC on damaging a person's reputation on the grounds of racial, religious, ethnic or other affiliation can be interpreted in a way that would cover racist defamation (§ 18b of GPR No. 7). Article 387.5 CC makes it punishable to publicly threaten a person or group on the grounds of their race, skin colour, religion, nationality, ethnic origin or any other personal characteristic. While Articles 174 and 387.5 CC contain open ended lists of prohibited grounds, the grounds of colour, language and citizenship are missing in Article 54a CC.
3. Article 387.3 CC prohibits the public expression of ideas of superiority of one race over another. This is not fully in line with § 18d of GPR No. 7, according to which the expression of an ideology which depreciates or denigrates a grouping of persons on the enumerated grounds should also be criminalised. ECRI welcomes the fact that the Serbian authorities have taken steps to bring their criminal law in line with § 18e of GPR No. 7, Article 6 of the Additional Protocol to the Cybercrime Convention and Article 1.1c of the EU Framework Decision 2008/913/JHA. However, it regrets that denial of genocide or war crimes is only punishable if these acts have been recognised as genocide or war crime by domestic courts or the International Criminal Court; thus, the new text excludes

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> This is not remedied by Articles 387.4 or 344a.2 CC. Article 387.4 CC only criminalises the dissemination of texts, images or any other representation of ideas or theories that incite violence, but not other, in particular the verbal forms of incitement to hatred. Article 344a.2 CC requires a result in the form of actual violence, whereas incitement to violence is not a result crime. Articles 34.2 and 121 CC make it an offence to call on a specific person or group to commit a violent act, but they do not cover general calls to violence towards ethnic minorities or other vulnerable groups as recommended in § 18a of GPR No. 7. See also Article 1.1a of the Council Framework Decision 2008/913/JHA of the Council of the EU.

<sup>4</sup> The statistics mentioned in § 19 indicate that some of these grounds are however covered in practice.

all decisions of the International Criminal Tribunal for the former Yugoslavia and the International Court of Justice.

4. Article 387.4 CC makes it a criminal offence to disseminate or otherwise make publicly available texts, images or any other representation of ideas or theories that support or incite hatred, discrimination or violence against any person or a group based on their race, skin colour, religious affiliation, citizenship, ethnic origin, or any other personal characteristic. This is not fully in line with § 18f of GPR No. 7, as it does not cover the preparatory acts of producing or storing such material and because it only mentions incitement to hatred and not the other offences listed in § 18a) to e) of GPR No. 7. Article 346 CC on the creation of a group for the purpose of committing criminal offences and Article 345 CC on conspiracy to commit an offence are not fully in line with §18g of GPR No. 7, according to which the creation or leadership of a group that promotes racism should be punishable, as well as support for such a group or participation in its activities.
5. Article 128.1, 128.2 and 387.1 CC are in line with § 18h of GPR No. 7 on the criminalisation of racial discrimination in the exercise of one's public office or occupation. ECRI is pleased to note that Article 387.2 CC even protects organisations campaigning for equality. Genocide is punishable under Article 370 CC (§ 19 of GPR No. 7). Instigating (Article 387.3 CC), aiding and abetting (Article 35 CC) or attempting (Article 30 CC) to commit criminal offences is punishable as recommended in § 20 of GPR No.7. ECRI strongly welcomes the fact that the authorities introduced the new Article 54a CC in 2012, which makes racist motivation an aggravating circumstance. ECRI has repeatedly underlined that such a provision is essential for robust protection of vulnerable groups against hate crime.
6. In line with § 22 of GPR No. 7, legal persons can be held responsible for committing criminal offences pursuant to Article 12 CC and Articles 2 and 6 of the Law on the Liability of Legal Entities for Criminal Offences. The sanctions set out in the aforementioned provisions can be considered effective, proportionate and dissuasive. Articles 48 to 53 CC provide for fines and alternative sanctions such as community service and disqualification from driving (§ 23 of GPR No. 7).
7. ECRI recommends that the Serbian authorities bring their criminal law into line with its General Policy Recommendation No. 7; in particular they should (i) include in all criminal law provisions aimed at combating racism and intolerance the grounds of skin colour, language, citizenship, ethnic origin, sexual orientation and gender identity, (ii) criminalise incitement to violence, (iii) criminalise incitement to hatred, discrimination and violence against persons or groupings of persons living outside Serbia, (iv) criminalise all denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes and (v) 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**

8. In its previous report, ECRI noted (§§ 22 and 25) that the Serbian Law on the Prohibition of Discrimination (LPD) is broadly in line with GPR No. 7.<sup>5</sup> In the following paragraphs, ECRI will concentrate on the remaining shortcomings.
9. The definition of indirect discrimination in Article 7 LPD is not fully in line with European standards such as §§ 1c and 4 of GPR No. 7, as its wording suggests

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<sup>5</sup> Concerning the compatibility with EU anti-discrimination standards see EU EC 2015: 56.

that it only covers the actual occurrence of disadvantages,<sup>6</sup> whereas it should be possible to challenge apparently neutral provisions even before actual disadvantages occur.<sup>7</sup> Furthermore, under the LPD the instruction to discriminate<sup>8</sup> and the announced intention to discriminate do not appear to be considered forms of discrimination as recommended in § 6 of GPR No. 7. On the other hand, ECRI welcomes the fact that Article 11 LPD explicitly prohibits hate speech as a form of discrimination.<sup>9</sup> It also takes positive note of the authorities' plan to amend the provision on indirect discrimination.

10. The general prohibition of discrimination in Articles 1.1, 4.2 and 8 LPD applies, according to its wording, to everybody both in the public and in the private sectors, in all areas (§ 7 of GPR No. 7).<sup>10</sup> ECRI is pleased to note that the Commissioner for the Protection of Equality (CPE) is preparing amendments in order to narrow the scope of the remaining exceptions.<sup>11</sup> At the same time, ECRI notes that discussion are continuing about whether this general prohibition also covers areas such as housing or social protection.<sup>12</sup> Therefore, it encourages the authorities to clarify, when amending the LPD, the general prohibitions' wide scope of application and the scope of the exceptions.
11. Article 81 of the Constitution stipulates that Serbia shall encourage a spirit of tolerance and intercultural dialogue in the fields of education, culture and information, and that it shall implement efficient measures for enhancing mutual respect, understanding and cooperation among all people living on its territory. This is not fully in line with § 8 of GPR No. 7, according to which the law should explicitly place all public authorities under a positive duty to promote equality and to prevent discrimination in carrying out their functions. ECRI considers that this general positive duty should be introduced into the LPD or the Constitution.<sup>13</sup>
12. ECRI has received no information indicating that the law places public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and positively promote a policy of non-discrimination (§ 9 of GPR No. 7). According to § 10 of GPR No. 7, the law should also ensure that easily accessible judicial and/or administrative proceedings, including conciliation procedures, are available to all victims of discrimination. ECRI notes that access to justice for victims of discrimination is severely hampered by the absence of a law on free legal aid.<sup>14</sup> It is pleased to note that a draft law on legal aid is under consideration and encourages the authorities to conclude the legislative procedure swiftly.
13. According to Article 20.2 of the Serbian Labour Law, discriminatory provisions in labour contracts shall be null and void. ECRI was not informed of the existence of a similar rule for collective labour agreements. Moreover, it received no information to indicate that Serbian law would, in areas other than labour law,

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<sup>6</sup> According to Article 8 LPD, indirect discrimination shall occur, if an individual or a group of individuals [...] is placed in a less favourable position [...].

<sup>7</sup> European Equality Law Network (EELN) 2015: 8; EU EC 2015: 56.

<sup>8</sup> EELN 2015: 11.

<sup>9</sup> This provision could however be clarified by pointing out that the second half of Article 11 LPD contains concrete examples of forbidden hate speech, cf. EELN 2015: 8.

<sup>10</sup> EELN 2015: 47 et seq.

<sup>11</sup> CPE 2016a: 259. The restrictions in the field of housing should be included into this work.

<sup>12</sup> EELN 2015: 11, 56 and 58; ECRI's 2nd report on Serbia §§ 22 and 25; CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (AC FCNM) 2014: 16.

<sup>13</sup> See the CPE's similar recommendation No. 5 in its 2015 annual report, CPE 2015a: 258.

<sup>14</sup> See in this respect also § 26 of GPR No. 7 and the related recommendation No. 10 in the 2015 annual report of the CPE, CPE 2015a: 258.

provide that discriminatory provisions in individual or collective contracts or agreements and other regulations be null and void (§ 14 of GPR No. 7).<sup>15</sup>

14. According to Article 55.4 of the Constitution, the Constitutional Court may ban associations which aim to violate human or minority rights, or to incite racist national or religious hatred (§ 17 of GPR No. 7). The activities of such organisations are also prohibited under Article 10 LPD. A political party, which pursues these aims or carries out such prohibited activities, shall also be prohibited by the Constitutional Court (Articles 37 and 4 of the Law on Political Parties). ECRI was not, however, informed about any additional obligation to suppress the public financing of such racist organisations (§ 16 of GPR No. 7).
15. ECRI recommends that the Serbian authorities bring their anti-discrimination legislation fully into line with ECRI's General Policy Recommendation No. 7; in particular they should (i) ensure that it is possible to take legal action in cases of indirect discrimination even before actual disadvantages occur, (ii) clarify the scope of the general prohibition of discrimination in the Serbian Law on the Prohibition of Discrimination, (iii) introduce a legal provision placing all public authorities under a positive duty to promote equality and to prevent discrimination in carrying out their functions, (iv) enact legislation on free legal aid including free representation by a lawyer, (v) provide that all discriminatory provisions in individual or collective contracts, agreements or other regulations should be amended or be null and void and (vi) provide for an obligation to suppress public financing of all organisations, including political parties, which promote racism.

- **Specialised national bodies**<sup>16</sup>

16. As described in ECRI's last report on Serbia, the Commissioner for the Protection of Equality (CPE) rests upon of a solid legal framework. She has a high degree of independence and possesses most of the functions and responsibilities listed in Principle 3 of ECRI's GPR No. 2 on Specialised bodies to combat racism and intolerance at national level and in §§ 24 and 52 of GPR No. 7. However, the CPE still lacks the power to take up cases of discrimination ex officio. While Article 37 of the LPD explicitly stipulates that the CPE can review the evidence submitted and hear the persons involved, the law unfortunately does not give her the power to request the production of documents and other elements nor to seize such items (§§ 24 and 52 of GPR No. 7).
17. ECRI recommends that the Serbian authorities give the Commissioner for the Protection of Equality the powers to take up issues of discrimination ex officio and to request the production of documents and other elements, and to seize such items.
18. In its previous report, ECRI considered that there was a need to increase the independence of the Protector of Citizens (Ombudsman), who is responsible for dealing with discrimination by public authorities. In 2015, the Council of Europe Commissioner for Human Rights expressed serious concerns at reports indicating that certain politicians and some media in Serbia had attempted to cast doubt over the Ombudsman's independence and moral stature. He also referred to reports that the Ombudsman and his advisers were prevented by the Minister of Defence from completing their inspection of the Military Security

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<sup>15</sup> EELN 2015: 89 states that in Serbia there are no mechanisms to ensure that contracts, collective agreements, internal rules of companies and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment.

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



Service, which was being carried out within the framework of the Ombudsman's mandate.<sup>17</sup> During its country visit to Serbia, ECRI received information indicating that these issues have not been resolved.<sup>18</sup> Reminding both sides of Principle 7 of its GPR No. 2, ECRI considers that the authorities and public officials should concentrate on the substance of the Ombuds' reports and recommendations and avoid endangering the institution's independence.

## 2. Hate speech<sup>19</sup>

### - Data

19. In Serbia, there are no comprehensive statistics on hate speech. According to the 2013 Anti-Discrimination Strategy, available data from various sources indicate that interethnic incidents including hate speech are still relatively frequent, although decreasing over recent years.<sup>20</sup> According to statistics from the prosecution services, criminal charges on hate speech were pressed against 216 individuals between 1 January 2011 and 30 May 2016. Out of these, 211 were based on Article 317 CC, three on Article 387 CC and two on Article 174 CC. 207 concerned the victim's national or ethnic origin, five their religious affiliation<sup>21</sup>, one their citizenship and one their sexual orientation. Most offences target Roma and lesbian, gay, bisexual or transgender (LGBT) persons. 106 persons were indicted and 41 persons convicted. Another 138 complaints were filed for racial (20) and homo- and transphobic (118) cybercrime.<sup>22</sup> These cases led to the conviction of 20 persons under Article 138 CC, of three persons under Article 317 CC and of one person under Article 387 CC. The police statistics, which have been published by ODIHR for the years up to 2015, contain slightly higher figures.<sup>23</sup> In 2015, the Press Council identified 20 violations of the Code of Ethics' provisions on discrimination and hate speech.<sup>24</sup> The CPE does not have separate statistics on hate speech, but informed ECRI that she had issued 35 warnings concerning hate speech in the media in 2015.
20. A survey carried out by the CPE in 2012 and 2013 indicated considerable levels of underlying social distance affecting a number of vulnerable groups. Among the surveyed persons, 80% would not like to have a LGBT person in their family, 57% responded so for people of Albanian origin, 53% for Roma, 45% for asylum seekers, 41% for people of Croat and 40.9% for people of Bosniak origin. Among the small number of surveyed persons belonging to ethnic minorities, two thirds of Bosniaks and one third of Roma responded that they would not marry members of the Serbian population.<sup>25</sup>

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<sup>17</sup> CommDH 2015b.

<sup>18</sup> See e.g. Balkan Insight 2016a and c; Informer 2016 and Nuns 2016a.

<sup>19</sup> This section covers racist and homo/transphobic speech. For a definition of "hate speech", see § 6 of the preamble to ECRI's GPR No. 15 on combating hate speech and Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech", adopted on 30 October 1997.

<sup>20</sup> Government 2013: 21.

<sup>21</sup> 22 cases registered under national or ethnic origin also concerned the ground of religion. Out of the total of 27 cases involving this ground, 12 were targeted Muslims, 7 at Catholics, 5 at Jehovah's witnesses and 3 at Jews.

<sup>22</sup> The offences against LGBT persons were registered under Article 138 CC on endangering the safety of others.

<sup>23</sup> Office for Human Rights and Minority Rights of Serbia 2016; OSCE, ODIHR 2016.

<sup>24</sup> Protector of the Citizens 2016a: 6. 11 cases concerned media not having accepted the Council's full jurisdiction.

<sup>25</sup> Center for Free Elections and Democracy (CeSID) 2012: 7 et seq.; CPE 2015: 20 et seq. The last results would seem not to be representative.

- **Racist public discourse**

21. ECRI is deeply concerned about the continued raise of hate speech in Serbian public discourse, which is amplified by wide media coverage. In 2015, the CoE Commissioner for Human Rights observed that it has become common practice for senior public officials to verbally attack journalists, calling them ‘traitors’ and ‘foreign mercenaries’ working against Serbian interests.<sup>26</sup> Such attacks are often followed by a shorter or longer period of denigration by a number of media.<sup>27</sup> “Witch hunts” of this sort also target political opponents and human rights activists working on war crimes.<sup>28</sup> In September 2016, one such campaign resulted in dozens of online death threats against two journalists on the grounds of their supposed ethnic background.<sup>29</sup>
22. In addition, various interlocutors informed ECRI that regional tensions in the area of former Yugoslavia have risen sharply in recent months.<sup>30</sup> According to observers, the nationalist rhetoric and widespread use of terms such as foreign mercenaries, traitors, foreign agents, spies and “Šiptars”<sup>31</sup> in current public discourse are reminiscent of the kind of hate speech used before the recent wars in the region.<sup>32</sup> Relatedly, publications with nationalist and even racist content continue to receive wide attention.<sup>33</sup> There has been a resurgence in support for Second World War ideologists, pro-fascist groups and persons indicted or convicted for genocide and racial war crimes, who are publicly cast in a positive light. Islamophobia is also raising. Respondents to the survey cited in § 20 believe that political parties, the government, parliament, media and the judiciary are the main sources of this kind of intolerance and discrimination. The government is considered both the most discriminatory institution and the key to resolving this issue.<sup>34</sup>
23. Blatant examples of hate speech include statements made by the then Prime Minister Ivica Dačić two days before the 2013 Pride Parade.<sup>35</sup> Subsequently, upon decision of the CPE, Mr Dačić held a meeting with representatives of the organisation which had filed the underlying complaint to the CPE, who informed him about the situation of LGBT persons in Serbia.<sup>36</sup> In March 2014, Radomir Počuča, the then spokesperson for the Ministry of the Interior’s (MIA) anti-terrorism unit, openly called on football hooligans to use violence to sabotage an event organised by the NGO “Women in Black” on the fifteenth anniversary of crimes committed against Albanian civilians in Kosovo. His call was answered by a threatening rally which convened outside the NGO’s offices. When summoned before the High Court in Belgrade, Mr Počuča told media that

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<sup>26</sup> CommDH 2015a : § 145 ; Protector of the Citizens 2015: 129.

<sup>27</sup> Protector of the Citizens 2015: 11 and 2016: 7 with a concrete example.

<sup>28</sup> Balkan Insight 2016b.

<sup>29</sup> OSCE Representative on Freedom of the Media 2016; Nuns Press 2016b. Among journalists, this pressure often leads to self-censorship (see § 27 below).

<sup>30</sup> See e.g. Financial Times 2016, BBC 2016, Balkan Insight 2016c. As this report is directed to the Serbian authorities, it concentrates on hate speech coming from Serbia.

<sup>31</sup> CPE 2015: 98. “Šiptar” is a derogatory term for Albanians.

<sup>32</sup> See for example Balkan Insight 2016c; Nuns Press 2016c.

<sup>33</sup> In this context, the 1986 Memorandum of the Serbian Academy of Science and Arts was mentioned several times. For an in-depth analysis of the root courses of hate speech against LGBT persons see Stakić 2011.

<sup>34</sup> CeSID 2012: 35 and Albanian Institute for International Studies 2013: 59 et seq.

<sup>35</sup> Mr Dačić stated: “We should not go to the other extreme and mollycoddle them. [...] They are equal with other citizens but do not tell me it is normal, when it is not. If it is normal, why are we the exceptions then? I have no hatred towards them, I just cannot accept that it is normal because it is not natural”.

<sup>36</sup> CPE 2015: 120.

he was on the front line in Ukraine.<sup>37</sup> With regard to derogatory statements about Roma made by the president of the local community of Sirča on 17 July 2014<sup>38</sup>, the CPE and the Superior Court of Belgrade both found that they constituted a serious form of discrimination and that he had to both refrain from making similar statements again and publish, at his own expense, the verdict and an apology in a daily newspaper with nationwide distribution.<sup>39</sup>

24. On a positive note, ECRI is pleased to highlight that there are regularly calls from senior government officials for tolerance, in particular towards LGBTI people, and that there is almost no public hate speech against refugees in Serbia.<sup>40</sup> During its field visit to the southern Serbian municipality of Preševo, ECRI's delegation also observed positive efforts of a new, young generation of politicians to develop better interethnic relations.

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

25. In 2011, Radio Television of Serbia (RTS) apologised to viewers throughout former Yugoslavia for its role as Slobodan Milosevic's principal propaganda tool in the 1990s.<sup>41</sup>
26. However, media outlets continue to give coverage to hate speech from politicians and other public figures, amplifying its effect. The inflammatory language used in the media makes an additional contribution to the increasing tensions between ethnic groups in the country and in the region.<sup>42</sup> Concerning a referendum held in the neighbouring Republika Srpska in September 2016<sup>43</sup>, the OSCE Representative on Freedom of the Media noted that media outlets in both Bosnia and Herzegovina and Serbia had published a number of articles referring to the threat of a new armed conflict in and around Bosnia and Herzegovina and urged all stakeholders to avoid using any language which could escalate the situation further.<sup>44</sup>
27. According to analysts, many media outlets are struggling to survive commercially following their recent privatisation, resulting in a growing "tabloidisation" of the print media and an increase in the number of reality shows on television.<sup>45</sup> Both trends contribute to the proliferation of inflammatory language and hate speech. In a recent survey, 54% of journalists cited unprofessional reporting and a lack of relevant education as the biggest issues facing the profession. Furthermore, 28% expressed concerns about threats and blackmailing, 41% had occasionally experienced censorship and 49% responded that they or their colleagues occasionally practiced self-censorship.<sup>46</sup>

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<sup>37</sup> CSO Coalition for Monitoring of the Implementation of OSCE Commitments 2015: 94; YUCOM 2016. In total, complaints were filed against 12 persons for criminal offences committed against this NGO.

<sup>38</sup> "Sirča is having difficult times. Neither floods nor earthquakes have degraded Sirča as the settlement of Kosovo Roma. We are not racists, but we cannot live together with them because our peace is disrupted. [...] We cannot mix with them".

<sup>39</sup> CPE 2016: 180; EELN 2015: 97.

<sup>40</sup> However, observers fear that this situation may change, given that many refugees are no longer able to merely pass through the country and may therefore be forced to ask for asylum in Serbia in greater numbers. See in this context § 20.

<sup>41</sup> The Guardian 2011.

<sup>42</sup> See e.g. Protector of the Citizens 2016: 186; Albanian Institute for International Studies 2013: 58.

<sup>43</sup> The Republika Srpska is one of the two administrative entities which make up Bosnia and Herzegovina.

<sup>44</sup> OSCE Representative on Freedom of the Media 2016.

<sup>45</sup> Nyman-Metcalf K. et al. 2015 : 8 et seq.

<sup>46</sup> Protector of the Citizens 2015: 10.

28. Media outlets often reveal the ethnic background or religion of persons suspected of criminal offences. In 2015, the CPE recorded 69 cases in which the disclosure of the ethnic background or other personal characteristics of suspected criminals by media outlets led to a complaint in the area of public information and media.<sup>47</sup> On a positive note, the recent Pride Parade 2016 received better media coverage than in previous years, though reports highlighted the costs of the heavy police protection for the event, as if insinuating that LGBT persons were responsible for this.
29. Hate speech is increasingly disseminated via the Internet. Various interlocutors informed ECRI that hate speech targeting vulnerable groups on Internet forums and in social media is on the rise. The MIA's High Technology Crime Department found, for example, that 30 people had threatened the organisers of the 2015 Pride Parade and posted hate speech on social networks. Antisemitic and islamophobic postings are also frequent.<sup>48</sup> In many cases, hate speech of this sort can be posted anonymously, which hampers criminal investigation. According to a recent study on digital violence, two thirds of all secondary school students had at least once been exposed to digital violence, including hate speech. The study also points out that there is a strong link between digital and "traditional" violence.<sup>49</sup>

- **Extremist groups and racism in sport**

30. According to the authorities, two extremist and racist groups have been disbanded by the Constitutional Court in recent years. However, it would seem that one of these, "Obraz", is still active; the organisation attempted to organise a demonstration against the 2016 LGBT Pride Parade.<sup>50</sup> Other extremist movements based on ideologies that oppose equality and respect for diversity have recently been gaining momentum.<sup>51</sup>
31. ECRI is particularly concerned about the activities of football fan groups, which are involved in unlawful and criminal activities.<sup>52</sup> According to observers, there are strong links between violent football fan groups and far-right organisations which, in turn, have ties with nationalist politicians and organised crime.<sup>53</sup> ECRI was informed that several hundreds of supporters of the football team Red Star Belgrade travelled to Novi Pazar, a city mainly inhabited by people of Bosniak origin, for matches on 27 March and 28 August 2016. During both matches, the Red Star Belgrade supporters chanted songs including "Oh Pazar new Vukovar, oh Sjenica, new Srebrenica" and "Kill! Slaughter! A citizen of Novi Pazar should not exist!", and carried with them flags, symbols and pictures of persons and groups blamed for "ethnic cleansing" during the Second World War. The fans were accompanied by police officers, who chose not to intervene regarding this racist behaviour, despite its criminal relevance. ECRI also received reports of hate speech from football fans directed at Roma. In addition, there were reports that pressure and threats from extremist football fans were the main reason for the cancellation of the 2011 LGBT Pride Parade.<sup>54</sup> Serbian hooligans also repeatedly sang "Knife, wire, Srebrenica", a song glorifying the Srebrenica

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<sup>47</sup> CPE 2016: 276. 21 of these cases concerned sexual orientation, 17 gender identity and 11 citizenship or ethnic origin.

<sup>48</sup> Belgrade Centre for Human Rights 2016: 58 and 326; Foundation for Political, Economic and Social Research (SETA) 2015: 457 et seq.

<sup>49</sup> CPE 2016: 40; Unicef 2013: 8.

<sup>50</sup> European Center for Not-for-Profit Law 2016: 24.

<sup>51</sup> Protector of the Citizens 2016: 8.

<sup>52</sup> Protector of the Citizens 2015: 11.

<sup>53</sup> See e.g. BBC 2010; Kulturni Centar Damad Novi Pazar 2015: 41.

<sup>54</sup> Opendemocracy 2013.

genocide.<sup>55</sup> Necessary responses to these activities are dealt with in §§ 55 et seq. of this report.

- **Responses to hate speech**

32. ECRI considers that decisive action is required to counteract the observed rise in hate speech. It is therefore pleased to note the proposed measures in areas such as prevention, criminal prosecution and media found in the 2013 anti-discrimination strategy and the 2014 action plan for this strategy's implementation.<sup>56</sup> The implementation of preventive measures is the first step in curbing the rise of hate speech in a sustainable way (cf. § 4 of ECRI's GPR No. 15). In this regard, the authorities should introduce and strengthen compulsory education at all school levels on human rights, the right to equality and the prohibition of hate speech and discrimination. This education should cover the horrifying consequences of hate speech in recent history, including genocide, as well as the fact that Islam, Judaism and Christianity stem from common sources and worship the same god.<sup>57</sup> Awareness-raising campaigns on these issues aimed at the general public should also be continued.
33. ECRI welcomes the fact that the Serbian Parliament is in the process of adopting a code of conduct, which will prohibit the use of hate speech by its members and provide for sanctions if breached. ECRI considers that the government needs also to adopt a similar code of conduct with efficient mechanisms for preventing and punishing the use of hate speech. Both codes of conduct should provide for training measures, unambiguous condemnation of breaches by high representatives of the state, as well as suspension and other sanctions for breach of their provisions (§ 6 of GPR No. 15). Moreover, political leaders should actively promote interethnic friendship and de-escalation of ethnic tensions in the country and in the region.
34. ECRI recommends that the Serbian Parliament and Government adopt codes of conduct which prohibit the use of hate speech, provide for suspension of mandate and other sanctions for breach of their provisions and establish effective reporting channels.
35. With regard to the media, ECRI notes with interest that in recent years a framework of (self-) regulation has been put in place with a view to preventing and punishing the use of hate speech. Article 75 of the 2014 Public Information Law stipulates that ideas, opinions or information published in the media shall not incite discrimination, hate or violence [...], regardless of whether the publication is considered a criminal offence. According to Article 51 of the 2014 Law on electronic media, the Regulatory body for Electronic Media (REM) shall ensure that the programme content of media service providers does not contain information which overtly or covertly encourages discrimination, hatred or violence.
36. In 2012 and 2013, two major professional associations for journalists adopted a Code of Ethics, point IV.1 of which states that journalists shall oppose all those who violate human rights or who advocate any kind of discrimination, hate speech or incitement to violence. According to point V.4, a journalist must be aware of the danger of discrimination that can be spread by media and shall do everything they can to avoid discrimination based on race, sexual orientation and other similar grounds.<sup>58</sup> A Press Council was established in 2012, including a Complaints' Commission whose jurisdiction covers the printed press, online

<sup>55</sup> Trost T. and Kovacevic N. 2014: 117; Kulturni Centar Dmad Novi Pazar 2015: 28; cf. also Balkan Insight 2014c.

<sup>56</sup> Government 2013 and 2014.

<sup>57</sup> Inter-religious tolerance should also be mandatory part of religious education.

<sup>58</sup> 1881 Journalists's Association of Serbia 2013.

media including news portals without print editions, and news agencies. Upon receiving a complaint, this Commission decides whether the aforementioned Journalist's Code of Ethics has been breached, including cases involving media actors who have not accepted its jurisdiction.<sup>59</sup>

37. ECRI notes with regret the frequent, serious breaches of the Code of Ethics and considers that intensified, recurring training for journalists is crucial for improving respect of its standards.<sup>60</sup> Special attention should be given to the circumstances in which it is permissible to reveal information about the ethnic and religious background of suspect persons, namely only if it serves a legitimate purpose, such as in the case of a wanted notice (cf. §§ 20 and 88 of ECRI's GPR No. 11).
38. ECRI recommends that the Serbian authorities initiate intensive training for journalists on the journalists' Code of Ethics, which could be carried out, for example, by the Press Council, the Regulatory body for electronic media and the Commissioner for the Protection of Equality.
39. ECRI also deplores that the system of (self-) regulation is not working properly. The REM and its predecessor organisation have rarely taken action to combat the increasing use of hate speech in electronic media; in only two cases, one in 2011 and the other in 2016, did they impose sanctions, and only then due to high levels of public pressure. It is believed that the general lack of action is a result of political influence, facilitated by the REM's limited de facto independence.<sup>61</sup>
40. The Press Council has received an increasing number of complaints in recent years (109 in 2015, 80 in 2014 and 71 in 2013). In 2015, it found violations in 60 cases and issued 36 public letters to media actors who had not accepted its jurisdiction. In 20 cases, the Code of Ethics's provisions on discrimination and hate speech had been violated. However, several media actors refused to publish the Press Council's decisions. Because it cannot issue any other sanctions and does not have the power to act ex officio, the Press Council is widely considered to be too weak. According to media monitoring, a large number of violations of the Code of Ethics have not been dealt with.<sup>62</sup>
41. Despite the fact that hate speech in the media constitutes a severe form of discrimination (Article 13.3 LPD) and in spite of there being a total of 35 cases in 2015, the CPE only issued warnings, rather than strong sanctions.<sup>63</sup>
42. ECRI recommends (i) that the authorities ensure full independence of the Regulatory Body for Electronic Media (REM) and refrain from any political influence on this body, (ii) that the Press Council be provided with the power to take up cases ex officio, (iii) that the authorities ensure that the Press Council's decisions are followed up with financial sanctions, such as, for example, the cutting of public subsidies, (iv) that the REM, the Press Council and the Commissioner for the Protection of Equality take up all cases of hate speech in

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<sup>59</sup> Press Council 2013: 1.

<sup>60</sup> Press Council 2013: 1 et seq.

<sup>61</sup> South East European Media Observatory 2015: 2; Nyman-Metcalf K. et al. 2015: 12 et seq. The 2011 case concerned the statement made by singer Maja Nikolic on a reality TV show saying that "she hated Jews". Maja Nikolic was subsequently removed from the show at the request of the REM's predecessor organisation (Balkan Insight 2011b). The second case concerned islamophobic statements, SETA 2015: 460 and EU EC 2016: 20 et seq.

<sup>62</sup> Nyman-Metcalf K. et al. 2015: 4; Protector of the Citizens 2015: 14 and 2016: 6 and 186; Press Council 2013: 2.

<sup>63</sup> For examples see CPE 2016: 97 et seq. Both the CPE and the Press Council decided for example that the use of the term "Šiptar" constitutes a violation of the LPD and the Code of Ethics, SETA 2015: 456.

the media, (v) that these institutions impose effective, proportionate and dissuasive sanctions (vi) and widely publicise their decisions.

43. Concerning online hate speech, ECRI notes that it is common for users to be able to post comments anonymously. Furthermore, many website operators do not monitor comments before their publication online and do not systematically remove instances of hate speech. ECRI therefore considers that the CPE, regulatory bodies and other stakeholders such as journalists' associations should develop a strategy on combating cyber hate speech. This could include elaborating standards for website operators, encouraging operators to adopt codes of ethics, ensuring that, by using efficient monitoring procedures, they prevent the posting of hate speech and that they remove existing hate speech promptly, as well as introducing relevant training. Social media networks should be obliged to prevent and remove hate speech from their sites through self-regulation and, if necessary, through state regulation. Schools should also pay more attention to cyber bullying among pupils and develop measures to prevent and counter this kind of hate speech.
44. Finally, the police, in particular the High Technology Crime Department, the LPD, journalist's associations, NGOs and other stakeholders should regularly monitor hate speech on the Internet and ensure that cyber hate speech and hate speech in other media is reported to the competent bodies.
45. ECRI recommends that the Serbian authorities develop a strategy on combating cyber hate speech, without encroaching on the editorial independence of the media.
46. Despite several positive developments, ECRI notes with regret that the criminal justice system is still failing to combat hate speech effectively. Firstly, ECRI was informed that there is a high level of so-called underreporting: many victims do not report hate speech to the police or other competent bodies.<sup>64</sup> In order to address this issue, police officers and prosecutors specialising in the investigation of hate speech and hate crime should be put in place. Given that hate speech is increasingly disseminated on the Internet, these officers need to have the specialist knowledge and technical tools to handle investigations in an efficient manner; they should also be in close contact with the MIA's High Technology Crime Department. Further training on handling hate speech and hate crime should be concentrated on these persons.
47. Secondly, civil society groups reported that the police are not always open to receiving complaints about hate speech incidents, in particular concerning Roma and LGBT persons.<sup>65</sup> In addition, members of vulnerable groups are often unaware of where and how to complain about such incidents. Officers specialising in hate speech and hate crime should therefore establish regular dialogue and co-operation with members of the relevant vulnerable groups. These should include Roma, other ethnic and religious minorities, LGBT persons and also journalists. Regular contact with these groups is a prerequisite for developing the mutual confidence and understanding required to ensure quick and efficient reporting of and responses to hate speech (§§ 18 and 67 of GPR No. 11).
48. ECRI was informed that some progress has been made in this regard. In four cities, police officers have been designated as contact persons for the LGBT community. Furthermore, the Office for Human and Minority Rights organises semi-annual meetings on hate crime, which involve various stakeholders. The prosecution services have established five information offices for victims and

<sup>64</sup> See for example Gay Straight Alliance 2015.

<sup>65</sup> With regard to LGBT persons, the CPE, in its 2015 annual report, cites surveys showing an unacceptable level of prejudice among police officers, CPE 2015: 69.

witnesses and the High Technology Crime Department is increasingly focusing on cyber hate speech. In the south of Serbia, where a multi-ethnic police force has been created through recruitment of considerable numbers of persons of Albanian origin (§ 17 of GPR No. 11), the reporting of hate speech and hate crime works better. Police contact officers should also be nominated for the Roma communities living throughout the country and for other ethnic and religious minorities. The obligation to create and maintain such structures should preferably be introduced into the law, for example in the framework of the on-going reform of the legislation on national minorities.

49. ECRI again welcomes the fact that the CPE is also competent for combating hate speech under Article 11 LPD and encourages it to fully make use of this competence. For this purpose the CPE should be included in the dialogue between the police, the prosecution and vulnerable groups.

50. ECRI recommends that the Serbian police and prosecution services designate, throughout the country, contact persons for vulnerable groups targeted by hate speech and hate crime. These contact persons should receive continuing training on the investigation of hate speech and crimes and build up and maintain, together with the Commissioner for the Protection of Equality, regular dialogue with these groups in order to ensure adequate reporting, investigation and prosecution of hate speech.

51. Thirdly, the application of existing criminal, civil and administrative law provisions against hate speech is inefficient. Despite wide-ranging training activities, many police officers still have little knowledge about discrimination, and their degree of social distance from vulnerable groups is high.<sup>66</sup> Against this background, ECRI takes positive note of the development of a new manual and plans to organise compulsory training for all police officers on recognising and responding to discrimination in 2017. The judiciary still suffers from inefficiency.<sup>67</sup> Statistics on hate speech cases are incomplete and do not contain detailed information on each reported case (see §§ 12 and 68 et seq. of GPR No. 11).<sup>68</sup> Moreover, these statistics are not published on a sufficiently frequent basis, e.g. monthly. In addition, criminal investigations into the registered cases are often expedited slowly and there is no transparency about the outcome of these investigations. This applies in particular to the field of cyber hate speech, in which the number of hate speech cases is soaring. Despite several training measures for the judiciary, very few cases go to court and the sanctions imposed are neither effective nor do they have a strong dissuasive effect.

52. ECRI recommends that the Serbian authorities establish and operate a system for recording and monitoring racist, homo- and transphobic incidents and the extent to which these incidents are brought before prosecutors and are eventually qualified as racist, homo- or transphobic offences. The police and prosecution services should investigate all reported cases of hate speech promptly and thoroughly and work towards effective and dissuasive punishment.

53. In the field of civil law, the lack of free legal aid (see § 12) hampers the application of the LPD. According to civil society sources, the CPE seldom uses its power to oblige perpetrators to apologise for their actions. Civil law cases on

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<sup>66</sup> See the results of the study « Police Attitude towards Discrimination » summarised in Gay Straight Alliance 2015.

<sup>67</sup> Cf. CoE CommDH 2015: §§ 40 et seq.

<sup>68</sup> With regard to issues of data protection, which are often invoked as an obstacle to the recording of statistical data in the field of racism, see ECRI 2007c.



hate speech and discrimination also progress very slowly.<sup>69</sup> As a result, there is very little case law, few strategic cases are known by the wider public and ECRI has not been informed about a single case in which a victim of racist, homo- or transphobic hate speech has obtained compensation.<sup>70</sup>

54. ECRI recommends that the Commissioner for the Protection of Equality and the Ombudsperson continue assisting victims of hate speech to bring cases before the courts.

55. More decisive action from the police, prosecution services and other authorities is needed to combat hate speech from racist organisations and, in particular, from racist football fan groups (cf. § 31).<sup>71</sup> This issue is of particular importance given the role that racist and violent football fan groups played in the outbreak of the recent wars in the region. Observers point out that violent clashes between fan groups strongly influenced and even accelerated the pre-war crisis and that many members of Red Star Belgrade fan groups formed and participated in paramilitary organisations that were subsequently directly involved in the wars.<sup>72</sup>

56. ECRI received no information about police investigations under Articles 317.1 or 387.3 CC of the hate speech observed during the aforementioned football matches in Novi Pazar. ECRI considers that the heavy police presence at football matches should be used to identify and remove racist symbols and banners, refuse access to sports grounds to persons carrying with them racist symbols or banners, intervene quickly to stop racist behaviour including the singing of racist songs, exclude racist persons from sporting events, document and secure evidence of hate speech and subsequently identify any persons taking a leading role in such behaviour (§§ 5 to 10 of ECRI's GPR No. 12). Other legal means, such as the rules on the dissolution of racist organisations, article 10 LPD (see § 14) and Article 346 CC (see § 4) should also be applied to racist fan groups.

57. ECRI strongly recommends that the authorities take immediate action to investigate, prosecute and punish racist behaviour of sports fans. It further recommends that the authorities take action to ban racist sports fan clubs.

### **3. Racist and homo/transphobic violence**

#### **- Data, extent of and response to the phenomenon**

58. Official statistics indicate a decrease in the number of racist, homo- and transphobic incidents over the past five years and in 2016 in particular: 56 cases were registered in 2011, 39 in 2012, 24 in 2013, 32 in 2014, 33 in 2015 and nine until July 2016. The two most frequently targeted groups are Roma and LGBT persons. A recent survey indicates that violence against LGBT persons is underreported and that the real level of homo- and transphobic violence is much higher than the official statistics suggest: 23% of the surveyed Serbian LGBT persons reported that they had suffered physical violence.<sup>73</sup> Transgender persons are particularly affected by hate crime, most likely due to them being more easily identified.<sup>74</sup>

<sup>69</sup> For examples see CPE 2016: 177 et seq. A positive exception is however the case of anti-Gypsism referred to in § 23.

<sup>70</sup> EELN 2016: 81 et seq.

<sup>71</sup> According to the authorities, there have been 30 investigations on incitement to hatred at sports events since 2010, which ECRI does not consider sufficient given the extent of hate speech at sports events.

<sup>72</sup> Colovic 2000 : 373 et seq. Opendemocracy 2013.

<sup>73</sup> NDI 2015: 11. 43% of the perpetrators were passers-by, 29 % hooligans and 14 % school colleagues.

<sup>74</sup> Cf. the study summarised in CPE 2016: 53.

59. The high levels of homo- and transphobia and related violence are regularly coming to the fore at LGBT Pride Parades. In 2010, at the first Pride Parade held in Belgrade since 2001, more than 100 people were injured during violent clashes between the police and far-right demonstrators, who attempted to disrupt the event. In addition, the offices of the Ombud were attacked and almost all windows broken. Over 100 people were detained for violent behaviour.<sup>75</sup> As a result, Pride Parades were banned for the following three years and only recommenced in 2014, again under heavy police protection. Criminal proceedings are still going on. LGBT persons are also frequently victims of domestic violence involving family members.<sup>76</sup> Civil society groups have recently launched a telephone helpline for victims of homo- and transphobic violence, which also collects data on hate crime.
60. Hate crime against Roma and its coverage in the media represent further significant challenges in Serbia. 38 cases of anti-Gypsist hate crime have been registered in the past five years: 8 in 2011, 11 in 2012, 3 in 2013, 8 in 2014, 6 in 2015 and 2 until October 2016.<sup>77</sup> According to civil society groups, underreporting is also a considerable issue with respect to anti-Gypsist hate crime. A recent, unreported case, filmed on video, is the one of a Roma boy who was severely beaten after playing music in a public space.
61. A series of hate crimes occurred in the aftermath of a football match between Serbia and Albania, which took place in Belgrade on 14 October 2014. During the match, a drone carrying a flag of so called “Great Albania” flew over the stadium. According to the authorities, this incident provoked 67 cases of insults and attacks on shops belonging to people of Albanian origin. In some cases, buildings were even set on fire. The majority of the attacks occurred on 14 and 15 October 2014; the number of attacks quickly diminished thereafter as a result of police protection measures.<sup>78</sup> In 28 cases, criminal charges were pressed and in 8 cases proceedings for misdemeanours were initiated.
62. ECRI considers that the issues to be addressed with regard to the prosecution of violent hate crime are similar to those already dealt with under criminal hate speech (§§ 46 et seq.): in addition to underreporting, ECRI was informed about a number of cases in which no investigation was opened.<sup>79</sup> ECRI is particularly concerned that, since its introduction in 2012, Article 54a CC on aggravating circumstances has not been applied in any of the cases mentioned in §§ 58 to 61, despite the prosecution services issuing mandatory instructions on this matter in December 2015. In this regard, ECRI refers to the case-law of the European Court of Human Rights, according to which state authorities investigating violent incidents must take all reasonable steps to establish whether they were racially motivated and whether hatred or prejudice based on ethnic origin played a role.<sup>80</sup> The police and prosecution must also apply these principles to homo- and transphobic hate crime cases. Finally, ECRI considers that the sentences imposed for hate crime are too lenient: in many cases fines

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<sup>75</sup> Protector of the Citizens 2011: 28.

<sup>76</sup> For data until 2014 see Gay Straight Alliance 2015.

<sup>77</sup> These figures, which the authorities provided to ECRI’s delegation during the country visit, differ slightly from the figures given in CommDH 2015: §77.

<sup>78</sup> It was reported that some victims asked for police protection immediately after the match, but that this request was refused at that point.

<sup>79</sup> For example, following the physical assault of two transgender persons in southern Serbia in October 2015, the police stated that mere injury would not be prosecuted *ex officio*.

<sup>80</sup> *Natchova and Others v. Bulgaria* [GC], Nos. 43577/98 and 43579/98, 6.7.2005, §§ 160 to 168; *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14.09.2010, § 81.

of only up to 200 or 300 Euros are imposed and the perpetrators are not registered as convicted criminals.<sup>81</sup>

63. ECRI reiterates the recommendations already made in §§ 50 and 52. It considers that the specialised police officers and prosecutors should ensure that investigations are initiated *ex officio* in all hate crime cases, in particular when there is evidence pointing to the possible application of Article 54a CC. Explicit reference to Article 54a CC should be made by the prosecution in the indictment. The police and prosecution officers specialising in hate speech and hate crime should also receive continuous training on the investigation of hate crimes (cf. § 50).

64. ECRI recommends that the police and prosecution services ensure that investigations are opened in all cases of racist, homo- and transphobic violence, in particular when there is evidence pointing to the possible application of Article 54a of the Criminal Code on aggravating circumstances. Explicit reference to Article 54a of the Criminal Code should be made by the prosecution in the indictments.

#### - **Prosecution of hate crimes committed during the recent wars**

65. ECRI deeply regrets the slow progress made in the prosecution and sentencing of genocide and other racist war crimes (§§ 19 and 21 of GPR No. 7) committed during the recent wars. The CoE Commissioner for Human Rights and the OSCE recently concluded that the socio-political environment is not conducive to the proper investigation of war crime cases, that the number of investigations is decreasing, that high-ranking persons are not prosecuted and that many serious crimes remain unpunished. ECRI notes with satisfaction that, in 2015, eight defendants were arrested in relation to the Srebrenica crimes committed in 1995 and that the Serbian war crimes tribunal concluded its first Srebrenica-related case in February 2016 with a sentence for war crime of 10 years imprisonment.<sup>82</sup> It also finds it positive that the government adopted a National Strategy for the Prosecution of War Crimes on 27 April 2016.<sup>83</sup>

66. While noting with satisfaction the apologies for the massacres in Srebrenica made by the parliament in 2010 and by the president in 2013, ECRI deplores the fact that neither of them has explicitly recognised that these massacres constituted genocide, as has been determined by international courts.<sup>84</sup> In addition, ethnic minority groups point out that no systematic purge has been carried out in the armed forces involved in the crimes committed during the wars.<sup>85</sup> They also complain that subsequent crimes committed with a possible racist motivation have not been properly investigated. For example, it is not known whether, following a possibly racist, armed assault on the offices of a Minister of Bosniak origin in 2009, an investigation was initiated and, if so, what the result the investigation was. As a result of this lack of transparent

<sup>81</sup> A positive exception is a recent six-month prison sentence in a hate crime case targeting Roma.

<sup>82</sup> OSCE Mission to Serbia 2015: 12 et seq.; Balkan Insight 2016d.

<sup>83</sup> Government 2016a.

<sup>84</sup> I.C.J., *Bosnia and Herzegovina v. Serbia and Montenegro*, 26.02.2007, ICJ Reports 2007, 43; ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, 24.03.2016. In 2010, the Serbian Parliament passed the following declaration: "The National Assembly of the Republic of Serbia strongly condemns the crime against the Bosnian population in Srebrenica in July 1995 in the manner determined by the ruling of the International Court of Justice as well as all social and political processes and phenomena that lead to the consciousness that the fulfilment of one's own national goals can be achieved by the use of armed forces and physical violence against members of another nation and religion, expressing thereby the condolences and apologises to the victims' families for what has not been done to prevent this tragedy." On 25 April 2013, President Tomislav Nikolic apologised for the massacre on behalf of the state and its people, *The Telegraph* 2013.

<sup>85</sup> See in this respect the analysis of the affiliations of the defendants in OSCE Mission to Serbia 2015: 17.

investigation and the resulting real or perceived impunity, people belonging to different ethnic communities continue to live in fear of the possibility of a new wave of hate crimes. They also perceive the conduct and behaviour of heavily armed military forces near the borders at Preševo as intimidating. ECRI's delegation witnessed such behaviour during its field visit.

67. Against this background, ECRI considers that political leaders should officially recognise that the massacres committed in Srebrenica constitute genocide. As such recognition is an indispensable component of efficient prevention of renewed interethnic hate speech and violence (see in this respect also § 18e of GPR No. 7), ECRI welcomes recent initiatives to this effect. Furthermore, ECRI considers that the Serbian authorities should pursue a clearer and stricter policy concerning the prosecution of racial war crimes and provide the judiciary with the necessary human and other resources to advance and conclude the prosecution and sentencing of war crimes efficiently.
68. ECRI recommends that the Serbian authorities efficiently implement the National Strategy for the Prosecution of War Crimes and that they publicly acknowledge that the Srebrenica massacres constituted genocide.

#### **4. Integration policies**

##### **- Data**

69. According to the 2011 census, 12.9% of the population of Serbia declared belonging to an ethnic minority and the report contains data about 21 distinct ethnic groups with more than 2 000 members. These include, in order of size, ethnic Hungarians (253 899); Roma (147 604<sup>86</sup>, the Council of Europe estimate is 600 000); Bosniaks (145 278); Croats (57 900); Slovaks (52 750); Montenegrins (38 527); Vlachs (35 330); Romanians (29 332); Bulgarians (18 543); Albanians (5 809)<sup>87</sup>; and others.
70. By the end of 2011, 17 590 foreigners had obtained temporary residence permits and by September 2016 less than 100 persons were granted refugee status or subsidiary protection.<sup>88</sup>
71. Serbia rightly focuses its integration policies on Roma: Roma are the most disadvantaged group in Serbia and the situation of the approximately 23 000 Roma displaced from Kosovo is particularly bad.<sup>89</sup> At the same time, integration policies are also necessary for other ethnic, religious and linguistic minorities and for migrants, including the small, but increasing number of asylum seekers and refugees. As issues relating to the preservation of the identity of historical minorities are dealt with by the specialised Council of Europe monitoring mechanisms, ECRI will focus on the need for a policy for their social integration.

##### **- Roma**

72. In March 2016, the Serbian authorities adopted a new Strategy for Social Inclusion of Roma (2016-2025). It is the latest in a series of strategic documents on Roma integration. ECRI welcomes the fact that the document is well structured, contains clear analysis and objectives and covers key integration issues such as education, employment, housing and health. In some, but

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<sup>86</sup> The number of persons having declared being Roma at the 2011 census is significantly higher than at the previous one. ECRI takes positive note of the fact that 700 Roma interviewers and coordinators were hired who carried out the census in many, but not all Roma settlements.

<sup>87</sup> The 2011 census was boycotted by the majority of the Albanian population in the Municipalities of Bujanovac and Preševo. In the previous census in 2002, 61 647 people declared that they belonged to the Albanian minority.

<sup>88</sup> Government 2013: 75; Belgrade Centre for Human Rights 2016: 13.

<sup>89</sup> CommDH 2015: 53 et seq.; UNHCR 2016.

unfortunately not all areas, it contains quantified targets and indicators to measure progress.

73. With regard to the evaluation of the integration policies for Roma, ECRI positively notes that there is now some detailed data available thanks to the cooperation of the authorities with organisations such as UNICEF. However, given that the existing data are fragmented and not up to date, ECRI considers that the authorities should fully assume responsibility for the issue of generating reliable equality data on an annual basis.<sup>90</sup>
74. The existing data show one major step forward: according to UNICEF, the number of unregistered and undocumented Roma at risk of statelessness has decreased from 30 000 to about 2000; to date, no more than 700 are without birth certificates. As registration and identity documents are a precondition for access to many public services and social benefits, this progress has resulted in a major improvement in the living conditions of the newly registered Roma.<sup>91</sup> The authorities also point out that 30 000 Roma children were vaccinated, that 1 300 Roma children were enrolled in pre-school and that 16 330 Roma received health insurance cards.
75. Aside from this, the evaluation in the following paragraphs unfortunately shows significant gaps in the implementation of the earlier strategies and action plans. As implementation has not worked properly in the past, ECRI is highly concerned about the fact that, at the time of its country visit in September 2016, there was still no implementation budget in place for the new strategy, that the responsibilities for the implementation of its objectives had not been clearly determined and that there was no strong monitoring unit and procedure in place.<sup>92</sup> There was also not much focus on Roma originating from Kosovo, among whom 98% cannot even meet their basic nutritional needs and largely depend on the help provided by UNHCR. Against this background, ECRI is pleased to note that, following its country visit, the authorities have pushed forward with the development of an action plan and a financial plan and with the establishment of a coordination authority for the implementation of the strategy.
76. ECRI recommends that the Serbian authorities designate the central, provincial and local authorities that are responsible for the achievement of the goals and the implementation of the related measures of the Roma strategy, that they designate the necessary human and financial resources for their implementation, that they set up a strong monitoring procedure and structure and that they ensure that the specific needs of Roma displaced from Kosovo are met.
77. The following paragraphs focus on three parts of the action plan to illustrate the current situation. With regard to the first, the field of education, ECRI notes that only 6% of the Roma children aged 3 to 5.5 years are enrolled in pre-school education (compared to about 50% in the total population). This clearly contradicts Article 13 of the Law on Pre-school Educational Institutions, according to which children from vulnerable groups shall have priority in pre-school enrolment. In the subsequent compulsory Preparatory Pre-school Programme only 63% of all Roma children are enrolled (compared to 98% of the majority population); among the Roma children living in poverty, this figure is only 46%.<sup>93</sup> Furthermore, for children with Romani as their mother tongue,

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<sup>90</sup> Government 2016b: 17. See in this respect <http://inkluzijaroma.stat.gov.rs/en>.

<sup>91</sup> See however Ombudsman Vojvodina 2015 concerning “purpose-bound” birth certificates and cf. CommDH 2015: 58 et seq.

<sup>92</sup> Standing Conference of the Roma associations of the citizens - the League of Roma 2016: 2.

<sup>93</sup> UNICEF 2014: 17; 2012: 2.

this programme is clearly too short to acquire sufficient mastery of Serbian or other languages of instruction.<sup>94</sup>

78. The primary school attendance rate of Roma children increased in recent years from 74% to 88% in 2013<sup>95</sup>. However, the gap compared to the total population remains significant and only 46% of all Roma children complete the eight-year primary education (compared to 88% of the total population).<sup>96</sup> Only half as many Roma girls as Roma boys attend secondary school; early and forced marriage, as well as a strong focus on housekeeping, are among the reasons. Even though the number of Roma students in secondary education has doubled in recent years, only 13% of all Roma and 7% of all Roma girls complete secondary education (compared to 69% of the total population).<sup>97</sup> The percentage of Roma completing tertiary education is almost zero (total population 13%). 7% of Roma children are affected by school segregation<sup>98</sup> and Roma are still overrepresented in special education, often due to insufficient mastery of the language of instruction.<sup>99</sup> Again, the situation of the ones living in Roma settlements is even worse. Only 69.1% of children of school-entry age enter the first grade and only 22% attend secondary or higher education.<sup>100</sup>
79. ECRI considers that (early) education of Roma is a key issue for sustainable Roma integration. Children from vulnerable groups such as Roma children need to acquire the necessary skills and a good level of competence in the future language of instruction prior to enrolment in primary school. ECRI therefore very much welcomes and supports the recommendation made in the Poverty Reduction Strategy to consider introducing compulsory pre-school education to achieve the successful integration of vulnerable children in the regular education system. Reinforced investment in mandatory pre-school education will benefit children from all vulnerable groups, and in particular Roma children living in Roma settlements. ECRI is well aware that there are not yet sufficient pre-school facilities all over the country. New facilities should however be opened as a priority in or near Roma settlements, as the existing, pronounced lack of such facilities in these places amounts to structural discrimination.
80. ECRI recommends that the Serbian authorities significantly and annually increase pre-school attendance rates among Roma children and in particular among those living in Roma settlements. At the same time, they should ensure that they acquire sufficient mastery of the future language of instruction prior to entering primary school.
81. In the field of schooling, the different factors contributing to the unsatisfactory results are well documented in the Roma strategy.<sup>101</sup> ECRI is pleased to note that in different projects and initiatives good practices have been developed to

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<sup>94</sup> Government 2016b: 22.

<sup>95</sup> Republic of Serbia 2013: 299; according to UNICEF 2014: 18, 84.9% of children living in Roma settlements attended primary school in 2014.

<sup>96</sup> According to UNICEF 2014: 17, the primary school completion rate is of 93,4 % and in Serbian Roma settlements of 64%.

<sup>97</sup> Decade of Roma Inclusion Secretariat Foundation 2015: 61; UNICEF 2014: 18.

<sup>98</sup> Decade of Roma Inclusion Secretariat Foundation 2015: 61; Standing Conference of the Roma associations 2015: 2; PRAXIS 2016: 3.

<sup>99</sup> Decade of Roma Inclusion Secretariat Foundation 2015: 60 et seq.

<sup>100</sup> UNICEF 2014: 18.

<sup>101</sup> The following should be mentioned as major factors for the low school enrolment and high early school drop-out rates: prejudice and discrimination at school; tolerated irregular school attendance despite the provisions on compulsory education; lacking special support; poverty; the need to make children work; indecent housing conditions; lack of money for schoolbooks, clothes and other school-related costs; early marriages; parents not being convinced of the advantages of education; and insufficient cooperation between schools and parents. Government 2016: 22 et seq.; CARE Serbia 2011.

improve the schooling of Roma. Pedagogical assistants help enrolling Roma children in school and mobile teams in 20 municipalities rapidly intervene in cases of school-absenteeism. Pedagogical assistants provide special support to Roma pupils facing difficulties during their schooling. ECRI considers that these successful models should now be implemented throughout the country. Best practices - for example on quick intervention in case of absenteeism - should be included in secondary education legislation and school inspectors should help to implement them. Given the particular importance of education for sustainable integration, ECRI considers that the authorities should in general give more priority to the implementation of the Roma strategies' objectives in the field of education. In order to overcome the implementation gap in this area, they should fix concrete target values for increasing school-enrolment and raising the school completion rate among Roma, bring these indicators quickly towards the level of the majority population and thus ensure observance of the legal obligation to compulsory education for Roma.

82. ECRI recommends that the authorities, in particular the school authorities, focus on objective 5.1 of the Roma action plan to ensure full inclusion of Roma children in pre-school, primary and secondary education, that they swiftly implement the related measures and that they fix ambitious goals for core indicators such as increasing enrolment and completion rates in primary and secondary school.
83. Concerning a second integration field, Roma housing, ECRI notes with regret that the efforts made are far too small in scale to improve the distressing housing conditions of tens of thousands of Roma. In the past, 593 segregated Roma settlements with more than 100 inhabitants were counted, out of which as many as 72% are informal. 37% of all Roma households do not have adequate access to drinking water at home (compared to 8% of the general population), 67% are not connected to the sewage system, 11% do not have an electricity supply, 49% have to cook on wood fires, the average number of rooms per person is 0.63 (compared to 1.13), the existing Roma housing units are of generally poor quality and many are located in segregated, remote and shabby neighbourhoods; only 32% of the Roma have property documents for their homes (compared to 90%).<sup>102</sup>
84. Given the extent of the shortcomings and structural discrimination in this field, ECRI considers that political leaders, the competent ministries and local authorities need to make a major effort to remedy this unacceptable situation, for example by implementing the recommendations made by the UN Special Rapporteur on adequate housing in his recent report.<sup>103</sup> With regard to the Roma strategy, ECRI considers that quick progress is possible in implementing the measures under objectives 5.2.2, 3 and 4 of the strategy on spatial planning, legalisation of Roma houses and improvement of public infrastructure for Roma homes and settlements. In this respect it takes positive note of the ongoing mapping by the Ministry of Infrastructure of the infrastructure needs in Roma settlements. In addition, a national strategy for social housing was recently adopted and the city of Belgrade has adopted an action plan for the relocation of informal settlements in order to respect international and national standards in case of eviction and resettlement. A new housing law from December 2016 also improves protection in case of relocation. To achieve progress in objectives 5.2.5 and 6 of the Roma strategy on improving housing standards and building social housing units, funds from international donors, such as the Council of Europe Development Bank and the EU, should be

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<sup>102</sup> For more details see Government 2016b: 41 et seq. and 2013: 26; CommDH 2015: § 63; Decade of Roma Inclusion Secretariat Foundation 2015: 62 et seq.

<sup>103</sup> UN Special Rapporteur on adequate housing 2016.

solicited on a larger scale. In this respect, ECRI takes positive note of the development, under the 2013 EU Instrument for Pre-Accession Assistance (IPA), of a first series of housing related projects in 20 pilot municipalities. The new 2017 IPA shall also focus on social housing.

85. ECRI recommends that the Serbian authorities continue putting special focus on implementing the objectives and measures on Roma housing in section 5.2 of the Roma strategy and solicit for this purpose funding from international donors.

86. In the field of employment, special focus should be put on recruiting, out of the small, but increasing number of well-educated Roma, a proportionate number of civil servants to ensure proportionate representation (objective 3.6 of the Roma strategy). ECRI considers that affirmative action is particularly needed in this field to end the structural discrimination demonstrated by the fact that not a single Roma person is employed in important public service institutions and refers to the recommendation made in § 91 of this report. To implement the corresponding legal provisions<sup>104</sup>, functions such as Roma coordinators<sup>105</sup>, Roma health mediators, Roma teaching assistants in preschools, preparatory programmes and schools and Roma advisors and coordinators should be institutionalised; the approximately 300 Roma already working in these fields should furthermore be given sustainable working conditions. The federal administration, including ministries, should also hire Roma. The implementation of this objective would have the additional benefit of integrating into the civil service staff with sound knowledge about the situation and feasible solutions for the many problems Roma are facing.

- **Other ethnic, religious and linguistic minorities and migrants**

87. With regard to other minorities, ECRI will concentrate on a small number of issues. ECRI first of all considers that it is important to gather equality data concerning the living conditions of the different minorities in the country. Such data is indispensable for monitoring and evaluating whether and in which areas they suffer from discrimination. The complaints statistics of the CPE points to discrimination in the areas of labour, health and public services.

88. In this connection, ECRI notes with concern that unemployment seems to be particularly high in some areas predominantly inhabited by minorities. Whereas the overall unemployment rate was, according to the authorities, of 17.7% in 2015, ECRI was informed by civil society that unemployment reaches 60% and even 70% in some municipalities with high proportions of people of Albanian or Bosniak origin. ECRI regrets that the authorities do not have disaggregated unemployment data for these municipalities<sup>106</sup> and considers that these and other ethnic data should be collected. At the same time, it draws the authorities' attention to international standards developed in this field.<sup>107</sup>

89. ECRI recommends that the Serbian authorities develop a system of integration indicators and strengthen the collection of equality data, while ensuring the principles of confidentiality, voluntary self-identification and informed consent. This data should be used to improve integration and reduce discrimination against minorities in fields such as education and employment.

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<sup>104</sup> Article 77.2 of the Constitution, Article 21 of the Law on the Protection of Minority Rights and Freedoms and Article 9 of the Law on Civil Servants.

<sup>105</sup> See Association of coordinators for Roma issues 2016.

<sup>106</sup> The authorities have provided data at regional level. For the Pčinja district, where most Albanians live and for the Raška district, where the share of Bosniaks is highest, this data shows unemployment rates of 15.8% and 21.6%. The latter is the second highest figure among all districts.

<sup>107</sup> See ECRI 2007c and EU EC 2013.



90. At the same time, it encourages the authorities to stimulate economic activity in these areas, to attract employers to those municipalities<sup>108</sup> and to recognise diplomas obtained in neighbouring countries and at the universities in Kosovo and Metohija.<sup>109</sup> In this connection, ECRI's delegation witnessed, during its field visit to the municipality of Preševo, which is predominantly inhabited by persons of Albanian origin, more open and constructive attitudes among a new generation of local politicians and the provincial authorities (see also § 24). Their focus on solving concrete, practical problems is conducive to improving the economic and general situation of people belonging to minorities. ECRI considers that other authorities, minority representatives and minority councils should take inspiration from this positive approach to the important issue of inter-ethnic co-operation. The authorities should finally put special focus on hiring a substantial number of people belonging to minorities in all branches of the public services (see also § 86), as they have again stipulated in the 2016 Action Plan on the Exercise of Rights of National Minorities. They should set numerical targets for achieving this objective, and they could use mastery of minority languages as a selection criterion in recruitment procedures. In this context ECRI takes positive note of the new Law on Employees in the Autonomous Provinces and Local Self-government Units, which allows for such positive measures.

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

92. Many instances of discrimination can be avoided if people from all parts of diverse and multi-ethnic societies learn more than one language. ECRI therefore considers that the authorities should ensure that all people, and in particular people with minority background, acquire knowledge of the majority language at mother-tongue level and, at the same time, can learn and practice regional or minority languages.<sup>110</sup> In this context, it is also particularly important to remove discriminatory content from schoolbooks and to replace out-dated schoolbooks in minority languages.<sup>111</sup> Aside from this, ECRI draws the authorities' attention to the other recommendations made in its General Policy Recommendation No. 10 on combating racism and discrimination in and through school education.

## **II. Topics specific to Serbia**

### **1. Interim follow-up recommendations of the fourth cycle**

93. The first interim follow-up recommendation in ECRI's second report on Serbia was that the authorities strengthen the institution of the CPE by ensuring that it has the human and financial resources to function effectively. ECRI is pleased to note that the CPE has been provided with 12 additional staff and that it moved to new, appropriate premises in autumn 2016. It therefore considers that this recommendation is now fully implemented.

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<sup>108</sup> In the context of employment, ECRI again highlights the good practice example of the integration of a considerable number of persons with Albanian origin into the multi-ethnic police force in the south of the country.

<sup>109</sup> On the recent conclusion of an agreement on mutual recognition of the diplomas issued by the universities in Kosovo and Metohija see Government 2015: 12.

<sup>110</sup> See the Preamble to the European Charter for Regional or Minority Languages. According to the authorities, 561 502 children received their instruction in one out of nine different languages of national minorities at primary schools in 2016/2017. Another 11 509 learned one of 14 languages of national minorities as an elective course.

<sup>111</sup> Cf. Government 2013: 29.

94. With regard to the implementation of the second interim follow-up recommendation – to ensure that the training provided to the judiciary on issues of racism and racial discrimination is strengthened in order to, inter alia, ensure better sentencing practices for racist crimes – the authorities have informed ECRI that further trainings have been organised and that additional improvements are dealt with in the Action Plan for Chapter 23 of the EU accession negotiations. However, ECRI considers that there is still no systematic approach to the training of the judiciary on hate speech and hate crime, and that this training has not yet led to a noticeable improvement in the sentencing practice for racist crimes (see §§ 47 et seq. of this report). ECRI therefore is of the opinion that this recommendation has not been fully implemented.
95. ECRI considered in its conclusions on Serbia that the third interim follow-up recommendation – on the issuing of identity documents for Roma - had been fully implemented.

## **2. Policies to combat discrimination and intolerance vis-à-vis LGBT<sup>112</sup>**

### **- Data**

96. In Serbia, there are no official data on LGBT persons, their living conditions and the discrimination they suffer. Research shows that prejudice against LGBT persons is widespread<sup>113</sup>: 80% of the total population would not want to have an LGBT person as neighbour and only 18% state that they know and interact with an LGBTI person. 26% say that they would, upon discovering a friend or neighbour to be LGBTI, stop communicating with him/her; 24% would try to find a cure for him/her. 72% of Serbian LGBTI persons said that they have been psychologically abused, 51% have been discriminated and 23% have suffered physical violence.<sup>114</sup> Security is a daily concern for LGBT persons and has a strong impact on their lives.<sup>115</sup> Against this background, 63% of Serbian gay men talked about suicidal thoughts in the past (23.9% of the Total population) and 9% are currently thinking about suicide.<sup>116</sup>

### **- Legislation and policies**

97. The Anti-Discrimination Strategy for 2013-2018 and the corresponding action plan aim to ensure the observance of the constitutional principle of non-discrimination and to curb the high level of prejudice. They contain measures to improve the legislative framework, to combat discriminatory practice and structural discrimination, and to promote a culture of tolerance among the general public.<sup>117</sup>
98. ECRI is pleased to note that the strategy provides for extensive legal amendments. First of all, ECRI considers that sexual orientation and gender identity should be introduced as prohibited grounds into all criminal law provisions on hate speech and violent hate crime (see the recommendation in § 7) and that sexual orientation should be included in the list of prohibited discrimination grounds in Article 5 of the recent law on police.<sup>118</sup> The general preventive effect of such amendments would be a strong signal to the general public that any violence and hate speech towards LGBT persons is unacceptable. At the same time, such amendments would make it very clear to

<sup>112</sup> For terminology, see the definitions set out in CommDH 2011.

<sup>113</sup> See also §§ 20 and 59.

<sup>114</sup> NDI et al. 2015; see also § 20 of this report.

<sup>115</sup> Government 2013: 41.

<sup>116</sup> Pinknews 2013.

<sup>117</sup> Government 2013: 13 and 39 et seq.

<sup>118</sup> Gayten 2016.

the police and prosecution that special focus needs to be put on homo- and transphobic hate crime and that all allegations of such offences need to be investigated thoroughly.

99. In the field of civil law, ECRI notes with satisfaction that the action plan contains, under 4.3.2, the measure to draft a law on registered partnerships for same-sex couples by the end of 2017. An initial proposal has been presented by civil society<sup>119</sup> and a public hearing took place in 2015. ECRI considers that such legislation is of great importance for realising LGBT persons' right to equality and encourages the authorities to respect the timeline for the implementation of this measure.
100. For transgender persons it is of great importance to have access to gender reassignment treatment. There should also be a legal regulation in place for changing their name and gender in a quick, transparent and accessible way. ECRI therefore takes positive note of the strategy's measure to include in legislation effective procedures for these issues; at the same time, ECRI draws the authorities' attention to the international standards in this field and the trend to make these changes possible without imposing measures deeply interfering with transgender persons' right to private and family life, such as gender reassignment surgery, heavy hormonal treatment, sterilisation, divorce and extensive psychiatric examination.<sup>120</sup>
101. ECRI recommends that the authorities implement within the planned timelines their anti-discrimination strategies' measures on introducing registered partnerships for same-sex couples and on regulating the change of name and gender of transgender persons.
102. Given the considerable potential for domestic and other kinds of violence against LGBT persons, ECRI considers that the authorities should put a special focus on improving the personal security of LGBT persons. Schools, universities, the military and other security forces should be aware of bullying and create a safe environment in which young LGBT persons receive the information, assistance and protection they need in the particularly difficult phase of their coming out. Awareness-raising on HIV should be re-intensified and a sufficient number of shelters should be established, in which LGBT persons, and in particular transgender persons, can find a safe place, in particular during their coming out or transition.
103. Statistics show that a considerable proportion of discrimination against LGBT persons is committed by civil servants belonging to the police, the military, health services and the judiciary; discrimination at school is also frequent.<sup>121</sup> This kind of intolerance is particularly harmful, as it often deeply interferes with LGBT persons' personal and family life; it is also considered a severe form of discrimination under Article 13.2 LPD. Against this background, ECRI takes positive note of a considerable number of training measures for police and social welfare staff on LGBT issues. At the same time, it considers that such training needs to be continued and expanded to other sectors such as health services and the military. The authorities should also introduce LGBT issues into mandatory school programmes, remove homo- and transphobic content from schoolbooks and ensure that teachers and social workers in schools be sensitised to and trained in LGBT matters.
104. Finally, ECRI regrets that public officials do not always contribute to the strategy's goal of promoting a culture of tolerance towards LGBT persons. A prominent example of hate speech from the former prime minister has already

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<sup>119</sup> Belgrade Centre for Human Rights 2016: 329.

<sup>120</sup> ECtHR 2016; CoE, CM 2010; see also recent legislation in this field in Denmark, Malta and Norway.

<sup>121</sup> NDI 2015: 14.

been mentioned in § 23.<sup>122</sup> On the other hand, there are also signs of improvement, such as the recent appointment of an openly gay minister. Building on this, ECRI considers that the highest representatives of the country need to become permanent role models with regard to improving attitudes towards LGBT persons. The initiation of dialogue with religious leaders in the country, with a view to promoting greater understanding and tolerance towards LGBT persons, would also represent an important step forward.

105. ECRI recommends that the authorities create a safe environment for LGBT persons, that they continue and expand training of public servants on LGBT issues, introduce LGBT issues into mandatory school programmes and that the authorities and high representatives of the state become role models for improving attitudes towards LGBT persons.

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<sup>122</sup> Another recent example of a derogatory statement is the widely reported one made by the current prime minister after the 2016 LGBT parade, that he would rather go to the wedding of the former defence minister's son than join the Pride march, as there were more guests, Media Diversity Institute 2016.

## **INTERIM FOLLOW-UP RECOMMENDATIONS**

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

- ECRI recommends that the Serbian Parliament and Government adopt codes of conduct, which prohibit the use of hate speech, provide for suspension of mandate and other sanctions for breach of their provisions and establish effective reporting channels.
- ECRI recommends that the authorities give high priority to hiring a proportionate number of Roma and members of other minorities to the civil service and ensure that they benefit from equally stable working conditions as other civil servants.

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



## LIST OF RECOMMENDATIONS

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

1. (§ 7) ECRI recommends that the Serbian authorities bring their criminal law into line with its General Policy Recommendation No. 7; in particular they should (i) include in all criminal law provisions aimed at combating racism and intolerance the grounds of skin colour, language, citizenship, ethnic origin, sexual orientation and gender identity, (ii) criminalise incitement to violence, (iii) criminalise incitement to hatred, discrimination and violence against persons or groupings of persons living outside Serbia, (iv) criminalise all denial, trivialisation, justification or condoning of crimes of genocide, crimes against humanity or war crimes and (v) criminalise the creation or the leadership of a group which promotes racism, support for such a group, and participation in its activities.
2. (§ 15) ECRI recommends that the Serbian authorities bring their anti-discrimination legislation fully into line with ECRI's General Policy Recommendation No. 7; in particular they should (i) ensure that it is possible to take legal action in cases of indirect discrimination even before actual disadvantages occur, (ii) clarify the scope of the general prohibition of discrimination in the Serbian Law on the Prohibition of Discrimination, (iii) introduce a legal provision placing all public authorities under a positive duty to promote equality and to prevent discrimination in carrying out their functions, (iv) enact legislation on free legal aid including free representation by a lawyer, (v) provide that all discriminatory provisions in individual or collective contracts, agreements or other regulations should be amended or be null and void and (vi) provide for an obligation to suppress public financing of all organisations, including political parties, which promote racism.
3. (§ 17) ECRI recommends that the Serbian authorities give the Commissioner for the Protection of Equality the powers to take up issues of discrimination ex officio and to request the production of documents and other elements, and to seize such items.
4. (§ 34) ECRI recommends that the Serbian Parliament and Government adopt codes of conduct which prohibit the use of hate speech, provide for suspension of mandate and other sanctions for breach of their provisions and establish effective reporting channels.
5. (§ 38) ECRI recommends that the Serbian authorities initiate intensive training for journalists on the journalists' Code of Ethics, which could be carried out, for example, by the Press Council, the Regulatory body for electronic media and the Commissioner for the Protection of Equality.
6. (§ 42) ECRI recommends (i) that the authorities ensure full independence of the Regulatory Body for Electronic Media (REM) and refrain from any political influence on this body, (ii) that the Press Council be provided with the power to take up cases ex officio, (iii) that the authorities ensure that the Press Council's decisions are followed up with financial sanctions, such as, for example, the cutting of public subsidies, (iv) that the REM, the Press Council and the Commissioner for the Protection of Equality take up all cases of hate speech in the media, (v) that these institutions impose effective, proportionate and dissuasive sanctions (vi) and widely publicise their decisions.
7. (§ 45) ECRI recommends that the Serbian authorities develop a strategy on combating cyber hate speech, without encroaching on the editorial independence of the media.

8. (§ 50) ECRI recommends that the Serbian police and prosecution services designate, throughout the country, contact persons for vulnerable groups targeted by hate speech and hate crime. These contact persons should receive continuing training on the investigation of hate speech and crimes and build up and maintain, together with the Commissioner for the Protection of Equality, regular dialogue with these groups in order to ensure adequate reporting, investigation and prosecution of hate speech.
9. (§ 52) ECRI recommends that the Serbian authorities establish and operate a system for recording and monitoring racist, homo- and transphobic incidents and the extent to which these incidents are brought before prosecutors and are eventually qualified as racist, homo- or transphobic offences. The police and prosecution services should investigate all reported cases of hate speech promptly and thoroughly and work towards effective and dissuasive punishment.
10. (§ 54) ECRI recommends that the Commissioner for the Protection of Equality and the Ombudsperson continue assisting victims of hate speech to bring cases before the courts.
11. (§ 57) ECRI strongly recommends that the authorities take immediate action to investigate, prosecute and punish racist behaviour of sports fans. It further recommends that the authorities take action to ban racist sports fan clubs.
12. (§ 64) ECRI recommends that the police and prosecution services ensure that investigations are opened in all cases of racist, homo- and transphobic violence, in particular when there is evidence pointing to the possible application of Article 54a of the Criminal Code on aggravating circumstances. Explicit reference to Article 54a of the Criminal Code should be made by the prosecution in the indictments.
13. (§ 68) ECRI recommends that the Serbian authorities efficiently implement the National Strategy for the Prosecution of War Crimes and that they publicly acknowledge that the Srebrenica massacres constituted genocide.
14. (§ 76) ECRI recommends that the Serbian authorities designate the central, provincial and local authorities that are responsible for the achievement of the goals and the implementation of the related measures of the Roma strategy, that they designate the necessary human and financial resources for their implementation, that they set up a strong monitoring procedure and structure and that they ensure that the specific needs of Roma displaced from Kosovo are met.
15. (§ 80) ECRI recommends that the Serbian authorities significantly and annually increase pre-school attendance rates among Roma children and in particular among those living in Roma settlements. At the same time, they should ensure that they acquire sufficient mastery of the future language of instruction prior to entering primary school.
16. (§ 82) ECRI recommends that the authorities, in particular the school authorities, focus on objective 5.1 of the Roma action plan to ensure full inclusion of Roma children in pre-school, primary and secondary education, that they swiftly implement the related measures and that they fix ambitious goals for core indicators such as increasing enrolment and completion rates in primary and secondary school.
17. (§ 85) ECRI recommends that the Serbian authorities continue putting special focus on implementing the objectives and measures on Roma housing in section 5.2 of the Roma strategy and solicit for this purpose funding from international donors.



18. (§ 89) ECRI recommends that the Serbian authorities develop a system of integration indicators and strengthen the collection of equality data, while ensuring the principles of confidentiality, voluntary self-identification and informed consent. This data should be used to improve integration and reduce discrimination against minorities in fields such as education and employment.
19. (§ 91) ECRI recommends that the authorities give high priority to hiring a proportionate number of Roma and members of other minorities to the civil service and ensure that they benefit from equally stable working conditions as other civil servants.
20. (§ 101) ECRI recommends that the authorities implement within the planned timelines their anti-discrimination strategies' measures on introducing registered partnerships for same-sex couples and on regulating the change of name and gender of transgender persons.
21. (§ 105) ECRI recommends that the authorities create a safe environment for LGBT persons, that they continue and expand training of public servants on LGBT issues, introduce LGBT issues into mandatory school programmes and that the authorities and high representatives of the state become role models for improving attitudes towards LGBT persons.



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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 Serbia.**

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of Serbia 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 7 December 2016, date of the examination of the first draft).

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



**Comments of the competent authorities of the Republic of Serbia  
on the Draft report in the context of the Fifth cycle of monitoring  
of the European Commission against Racism and Intolerance CE (ECRI)**

**GENERAL COMMENTS**

- Serbian authorities acknowledge that ECRI reports are developed on the basis of “analyses based on a great deal of information gathered from a wide variety of sources”, which certainly include a number of interviews during the in situ visit. As stated in the Foreword of the Draft Report “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”. Nevertheless, in order to achieve objectivity of findings, we believe that the Report as a whole should reflect the views of all stakeholders involved in the process.
- Proposed Draft report contains a number of conclusions that are not supported by any source and/or relevant facts. We believe that the draft report contains a certain number of views and assessment of a more political nature, through which ECRI transgresses its mandate, and which constitute interference in the political sphere.

Despite the clearly stated mandate of ECRI that “ECRI shall draw up reports containing its factual analyses as well as suggestions and proposals as to how each country might deal with any problems identified” (Article 11 Paragraf 1 Statute of ECRI), the current Draft Report does not sufficiently rely on facts, but rather draws conclusions from sources that cannot be determined and appear to be conjectures and/or subjective impressions. Hence it is not clear what the connection is between the facts and the conclusions stated in the Draft Report.

- Attitude of ECRI on the existence of high level of inherent social distance between certain parts of the population at its base, is perceived as arbitrary by the Serbian authorities, because studies that support this view are not mentioned. This also implies that there should be no "no social distance" that borders on ideological views and attitudes and should not be part of this Report.

Similar unsupported conclusions whereby the authors claim: “entire ethnic communities continue to live in fear of the possibility of a new wave of hate crimes. They also perceive the conduct and behavior of heavily armed military forces near the borders at Preševo as intimidating”. Serbian authorities strongly disagree with such conclusions, and perceive these statements as absolutely arbitrary, given that neither the Draft Report nor the factual situation, provide any evidence for such conclusions.

- In some parts of the draft report, we believe that the terms are not precise enough, so racist war crimes as mentioned. But when it comes to the area of violations of international criminal law, elements of offenses that define protected persons, their characteristics or their existence as conditions for the existence of crime of discriminatory intent to pursue victims on political, racial or religious grounds are regulated by international treaties and represent an obligation of the Republic of Serbia.
- We would like to point out that a large number of senior government officials in their public speeches, calls for tolerance, respect for diversity and respect for the constitutional principle of equality. Also, they make use of every opportunity to indicate the necessity of refraining from violence against vulnerable social groups, particularly towards LGBTI people. The general

attitude of ECRI that public officials use inflammatory speech and incite hatred is unacceptable.

## **INDIVIDUAL COMMENTS**

### **1) Comment on paragraph 1**

We emphasize that the Constitution of the Republic of Serbia, Article 49 prohibits and punishes every inciting of racial, national, religious or other inequality, hatred or intolerance.

Bearing in mind the above provision of the Constitution, we point out that Article 34 of the Criminal Code (incitement) in paragraph 1 and 2 also stipulates that incitement to violence, though not explicitly prescribed as an act of commission, is punishable, if subject to fulfillment of legal requirements.

For the purposes of Art.34 of CC, incitement is always related to a specific crime and must be directed to a specific person or a specific group of persons, however, it is not necessary that the instigator personally know the perpetrator.

Provocation and incitement of hatred, in terms of Art.317 par. 1 CC, primarily implies influencing emotions, and partially the intellect, in that it creates or strengthens a certain feeling and attitude towards a nation or ethnic community, and for a crime it is not relevant whether and which further objective is to be achieved by inducing or fomenting hatred or intolerance, therefore, we may conclude that such a goal can also be violence, except when riots ensue, in this case, a qualified form of the criminal offense of Art.317. par. 3 CC is in question.

### **2) Comment on paragraph 7**

The stated basis of a criminal offense, although not laid down, is included in the National legislation of Serbia. Having in mind that the SFR Yugoslavia has ratified the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1967. The Republic of Serbia is based on a succession of previous country member of the Convention since 2001. The term "racial discrimination" under Art. 1. UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), refers to any distinction, exclusion, restriction or preference based on race, color, descent, national or ethnic origin which have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

In this regard, we find that the concept of "membership of race, nationality and ethnicity", in terms of Art. 54a of the Criminal Code, may also include skin color and language, as the basis of a criminal offense.

### **3) Comment on paragraph 9**

Action Plan for Chapter 23, in the first and second quarter of 2017, provides for the amendments to the Law on the Prohibition of Discrimination. The definition of indirect discrimination is in the process of harmonization with EU directives.

### **4) Comment on paragraph 12 and 13**

The Law on the Prohibition of Discrimination forbids conspiracy with a view to committing discrimination, i.e. the operation of organizations or groups aimed at the violation of the constitution, the rules of international law and freedoms and rights guaranteed by law or instigating national, racial, religious or other hatred, discord or intolerance.

In accordance with Article 3 of the Labour Law, collective agreement with the employer, in accordance with the law, regulates the rights, obligations and responsibilities arising from the employment relationship and the mutual relations between parties to a collective agreement, while the labour regulations or the labour contract, in accordance with the law, regulate the rights, obligations and responsibilities arising from employment, if the conditions for concluding a collective agreement have not been met.

We would like to point out that the collective agreement and the labour regulations are general acts in terms of the Labour Law. Article 9 of the Labour Law stipulates that if the general act and some of its provisions stipulate less favorable working conditions than the conditions stipulated by law, the provisions of the law shall apply.

Articles 18 - 23 of the Labour Law prohibit direct and indirect discrimination of persons seeking employment and employees with regard to their gender, birth, language, race, color, age, pregnancy, health condition or disability, national origin, religion, marital status, family obligations, sexual orientation, political or other opinion, social origin, property, membership in political organizations, trade unions or any other personal characteristic.

Article 20 of the Labour Law stipulates that discrimination referred to in Article 18 of this law shall be prohibited in relation to: 1) conditions for recruitment and selection of candidates for a specific job; 2) working conditions and all employment rights; 3) education, training and development; 4) promotion at work; 5) termination of employment. The provisions of the labor contract defining discrimination on any of the grounds referred to in Article 18 of this law are null and void.

According to Article 22, par. 2 of the Labour Law, provisions of the law, general act and the labour contract relating to special protection and assistance to certain categories of employees, especially those concerning the protection of persons with disabilities, women during maternity leave and leave from work for child care, special child care, as well as provisions relating to special rights for parents, adoptive parents, guardians and foster parents - are not considered to be discrimination.

Given the above, if the general acts (collective agreements and labour regulations) contain discriminatory provisions, they shall not apply, and provisions of the law shall apply instead, in accordance with Article 9 of the Labour Law. At the same time, we would like to point out that determining the constitutionality of the law, as well as the constitutionality and the legality of general acts is in the jurisdiction of the Constitutional Court.

#### **5) Comment on paragraph 14**

Regulation on the means of encouraging programs or missing part of funds for financing programs of public interest implemented by associations defines the term "association", which in terms of this Regulation shall mean the voluntary and non-governmental non-profit organization based on the freedom of association of natural or legal persons, established with the aim of achievement and improvement of certain common or general goals and interests, which are not prohibited by the Constitution or by law, which is included in the register of the competent authority in accordance with the law. In this regard, the Business Registers Agency can not register an association through which goals that are prohibited by the Constitution or the law are achieved.

#### **6) Comment on paragraph 16**

According to the Law on the Prohibition of Discrimination, proceedings on complaints submitted to the Commissioner for the Protection of Equality are

conducted upon the complaint filed by the person who considers that he has suffered discrimination, i.e. organization dealing with the protection of human rights, or other person. However, many other activities that aim to promote equality, as well as initiatives for amending regulations, notifications, alerts, recommendations of measures, filing of criminal and misdemeanor charges are realized by the Commissioner for the Protection of Equality on his own initiative. The Law on the Prohibition of Discrimination, Article 37, stipulates that upon receipt of a complaint, the Commissioner shall establish the facts by examining the submitted evidence and taking statements from the complainant, the person against whom the complaint has been filed, and others. The Commissioner has the right to require the submission of the document and to take statements from persons. Seizure of an object is possible in criminal and misdemeanor proceedings.

**7) Comment on paragraph 19**

The sentence "These cases are completed with the pronouncing of verdicts against 21 persons" should be replaced by the data "Convictions were brought against a total of 24 persons for the offenses referred to in Art. 317 CC (3 persons), Art. 387 CC (1 person) and Art. 138 CC (20 persons) committed against the LGBT community via the Internet."

**8) Comment on paragraph 28**

The Commissioner for the Protection of Equality filed 69 complaints in the field of public information and media, indicating personal characteristics (in 4 complaints, personal attribute was not specified), and the listed personal characteristics did not only relate to their nationality or ethnic origin, but also to sexual orientation - 21; gender identity - 17; nationality or ethnic origin - 11, and other personal characteristics are listed in the remaining 20 complaints.

**9) Comment on paragraph 31**

On 27 March and 28 August 2016 in Novi Pazar, a football match took place between the football club "Novi Pazar" and the football club "Red Star", which was attended by 450 spectators (27 March) and 300 spectators (28 August) - the football club "Red Star" fans. The number of football club "Red Star" fans who travelled to Novi Pazar is no different from the number of fans who attend football matches of the football club "Red Star" outside of Belgrade. We would also like to point out that the Ministry of Interior, as well as in the maintenance of all sports events anywhere in the territory of the Republic of Serbia, based on previously composed security assessments, hired the necessary number of police officers in order to maintain a stable state of public order and peace. During the above matches, the number of engaged police officers was close to the number of police officers who are normally engaged during organized departures of football fans of Red Star outside of Belgrade, in order to prevent physical violence at the sports event.

The fans travelled to the football match by buses organized by the football club "Red Star", as agreed upon by the two football clubs and with the number of tickets secured. The police monitored the activities of the fan group, observed the possible venues for gatherings of the football club "Red Star" fans and, in accordance with the security assessment and the well-established procedures, with 50 police officers of the City of Belgrade Police Directorate who took measures to secure the departure of "Red Star" fans for Novi Pazar. We would like to point out that this number of 50 engaged police officers is considerably fewer than the number referred to in the paragraph of the draft, "around 2000".

Regarding the profile of the police forces who were engaged in specific cases, we would like to emphasize that these are regular lines of the Ministry of Interior, which are always engaged during similar public gatherings (police officers of the

general police, traffic police, operational security, fire departments, etc.) and not "special police forces" as stated in the aforementioned point of the draft.

We also argue that, in accordance with the legislation of the Republic of Serbia, the matches were attended by representatives of the prosecutor's office who qualify the existence of a criminal offense in certain events and that police officers only act in accordance with the orders of the competent prosecutor in specific cases, if it is determined that individual behaviors acquire elements of a criminal offense.

After the match, the police worked intensively to identify individuals who threatened the safety of the participants of these football matches and, due to crimes and offenses, police filed criminal charges against 5 persons, and misdemeanor charges against 8 persons.

In connection with the allegations relating to the behavior of a group of spectators at a football match of the Serbian under-20 national football team, we would like to point out that the mentioned football game was played on 11 March 2014 in Modriča, Bosnia and Herzegovina. This sports event did not take place on the territory of the Republic of Serbia, and there are no indications that citizens from the territory of the Republic of Serbia participated in it, i.e. "Serbian hooligans" as stated in the draft.

In connection with a football match between "FC Novi Pazar" and "FC Red Star", played in Novi Pazar on 28 August 2016, after the identification of perpetrators, on 16 November 2016, PD Novi Pazar filed criminal charges against three adults and two minors at the Higher Public Prosecutor's Office in Novi Pazar, on suspicion of having committed a criminal offense defined as Violent behavior at a sports events or public gathering of Art. 344a CC. In relation to minors, the request for preparatory proceedings was submitted to the juvenile judge on 30 November 2016 at the Higher Court in Novi Pazar.

In addition, the prosecution examined one adult as a suspect, who fully admitted committing the crime, and since it was a person who had not been convicted, the order of 12 July 2016 obligated this person to pay an amount of money to the budget of the Republic of Serbia. Two suspects did not respond to calls from the prosecution, due to which order for their apprehension was issued. After their hearing, a decision will be made.

#### **10) Comment on paragraph 37**

Within the IPA project of the Ministry of Culture and Information „Strengthening media freedom“, which lasted from October 2013 to May 2016, numerous activities (workshops, seminars and conferences) were carried out on the implementation of harmonized legal framework for the media adopted in 2014, and in particular topics in the field of public information, discrimination, hate speech, the right to information minorities were discussed and calls for all activities were addressed, inter alia, to all the representatives of journalists' and media associations, as well as regulatory and self-regulatory bodies.

The Ministry of Culture and Information organized and held two activities provided for in the action plan for Chapter 23 - two expert seminars on 29 and 30 March 2015 on discrimination - Prohibition of hate speech for representatives of relevant institutions, professional associations and national councils of national minorities. The seminars were held by the Dutch expert regulatory body, a professor - expert on media law and an expert lawyer of a renowned law firm, so that all participants could interrelate all three dimensions - a review of the relevant EU legislation and case law, as well as the review of national legislation and case law.

#### **11) Comment on paragraph 41**

The Commissioner for the Protection of Equality has no legal authority to impose monetary, or any other penalties. Imposing monetary penalties is in the jurisdiction of the court, and the Law on the Prohibition of Discrimination prescribes the fines which may be imposed in misdemeanor proceedings. The Commissioner may issue a warning, in accordance with Article 40 of the Law on the Prohibition of Discrimination, if the person to whom the recommendation is addressed does not follow the recommendation or does not remedy the violation of the rights. If the person fails to redress the violation within 30 days of the notice, the Commissioner may communicate this fact to the public.

#### **12) Comment on paragraph 42**

Legal guarantees of independence of the Regulatory body for electronic media are given by: determining the status of the controller; method of selection of the regulatory body - the Council of the regulatory body for electronic media, the regulation of termination of the mandate, the regulation of the performance of the function and method of funding of the regulator.

Electronic Media Law stipulates that the Regulatory body for electronic media is an independent regulatory organization with the status of a legal person exercising public authority in accordance with the law. The regulatory body is functionally and financially independent of state bodies and organizations, media service providers and operators.

- The manner of selection of the regulatory body-the Council of the Regulatory body for electronic media

-The Council of the Regulator has 9 members. Council members are elected by the Assembly on the proposal of authorized nominators. Council members are proposed: 1/3 state (National Assembly 2 members and Assembly of the Autonomous Province of Vojvodina 1 member) and 2/3 non-governmental sector.

- Regulation of termination of the mandate

- The mandate of the Council member ceases only for the reasons and in the procedure provided by law (the expiry of time, death, dismissal, resignation). Council members may be dismissed before the expiration of the mandate, only by the National Assembly on the basis of criteria set by the Law;

- Regulation of the performance of functions

Members of the Council do not represent the interests of the authorities or organizations that nominated them, but perform their function independently, to their knowledge and conscience in accordance with the law; No one shall in any way influence the work of the Council members, nor shall they respect anybody's instructions regarding their work, except the decisions of the competent court enacted in the process of judicial review of the Council; The law clearly defines the scope of the Regulatory Body and the Council;

The work of the Council members is public and the Council submits an annual report to the National Assembly on its activities.

- The method of funding the regulator

The Regulator is not financed from the budget, but from the fees paid by media service providers. Decision on fees are brought by the Regulator. The Government approves the decision. Financing of the Regulator is conducted in accordance with the financial plan for each year by the Council of the regulators and approved by the National Assembly. In case of lack of funding, the state is obliged to provide missing



funds for the work of the Regulator. The surplus funds of the regulator is paid to the Budget of the Republic of Serbia.

Members of the Council are entitled to remuneration for their work, i.e. the President of the Council shall be entitled to financial compensation in the amount of three times the average of the monthly net salary in the Republic of Serbia and the members of the Council in the amount of double the average of the monthly net salary in the Republic of Serbia.

### **13) Comment on paragraph 46**

The Republic Prosecutor's Office has recognized the need to improve the situation of all victims, and to this end, the Information office for injured parties and witnesses in the higher public prosecutor's offices have been established in Belgrade, Novi Sad, Niš and Kragujevac, as well as in the First Municipal Public Prosecutor's Office in Belgrade, while the establishment of these services in all other high public prosecutor's offices in Serbia is underway.

Within the Information office, the injured parties and witnesses receive basic information about their rights in the process, available services, specialized assistance from the state and the NGO sector, ability to receive protection provided by the law and other rights.

It is our opinion that the establishment of these services at full capacity will contribute to improving the situation of all victims of crime, particularly of vulnerable categories, which include victims of crimes committed out of hatred.

### **14) Comment on paragraph 50**

The Ministry of Interior appointed eight liaison officers with the LGBTI community in four cities in Serbia. Liaison officer for the LGBTI community Aleksandar Stojmenov was awarded the 2016 "Rainbow" for the fight against homophobia and transphobia that is awarded by the Gay-Straight Alliance.

The national contact person for the fight against hate crimes was appointed in late 2009.

Office for Human and Minority Rights, with the support of the OSCE Mission in Serbia, organizes regular semi-annual meetings of representatives of relevant state bodies of independent state authorities and civil societies which carried out activities in the fight against hate crimes in their work so far. The purpose of these meetings is to share experiences, explore opportunities and mechanisms for the promotion of further cooperation of all stakeholders in the fight against hate crimes and hate criminality in the Republic of Serbia. The intention of the Office for Human and Minority Rights is that in the future, relevant institutions in this area designate an official contact person, in order to improve and increase the efficiency of the above interdepartmental working body.

### **15) Comment on paragraph 51**

All the information is available to authorized persons in criminal proceedings in accordance with the law, or to the public in accordance with the regulations governing access to information of public importance. We would like to note that, under the current legal framework in the Republic of Serbia, there is no "settlement with the victim", but the institute of agreement on the plea of the offense between the defendant and the public prosecutor, which is decided by the Court. By accepting the agreement, the court shall find the defendant guilty of a criminal offense which is subject to charges.

The Police Act stipulates that the training of employees in the Ministry of Interior shall be conducted in the organization of organizational units responsible for managing human resources and planned and implemented through professional

training and development. Professional training is also realized among others through basic police training, and the training of employees is planned and implemented in accordance with the program of professional training and within other forms of training.

In the period from 1 January 2011, the competent organizational units of the Ministry of Interior conducted a variety of activities related to the professional training of participants of basic police training, and professional development of employees in the Ministry of Interior. The basic police training is aimed at training participants for lawful and efficient performance of duties and tasks of the uniformed police officer, policeman in the workplace, and it is obligatory for all future police officers, and it is organized before entry into service, or prior to employment in the police.

The field of human rights within the basic police training (which is implemented in a period of 12 months at the Basic Police Training Centre - BPTC) is represented in several subjects and professional modules, including the special role occupied by the subject of "Human Rights and Police Ethics Code", where the following topics are handled: "Human Rights and Fundamental Freedoms of Man"; "Moral and Ethics"; "Deontology" and "Code of Police Ethics". The thematic area of "Human Rights and Fundamental Freedoms of Man" includes separate educational units that carry the title: "The right to life and the inviolability of the physical and psychological integrity," where the provisions of the following are discussed: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Code of Police Ethics, the provisions of the Constitution of the Republic of Serbia which guarantee the inviolability of the physical and psychological integrity and other legal norms and "Gender equality", where the recommendations of the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity are specifically implemented.

In addition to this subject, the areas related to the protection of human rights and freedoms are also processed within the course: "Criminal and criminal procedural law", "Police officials: rights, obligations and duties", as well as expert modules: Combating crime, Use of police powers and the use of coercive measures, Community policing.

In accordance with the Curriculum of professional training of participants of the basic police training, in the period from 1 January 2011 until now, nine classes have successfully completed training, i.e. 1,684 female and male participants (374 female participants and 1,310 male participants). In addition, we would like to note that training of a class (end of training set for January 2017) and 258 male and female participants (73 female participants and 185 male participants) is underway. In the course of their schooling, all female and male participants had the opportunity to acquire the necessary knowledge and develop the necessary attitudes regarding respect for human rights and freedoms and preventing torture and ill-treatment by the police, as well as respect for diversity of people of other sexual orientations and gender identities.

Professional training of staff in the Ministry of Interior of the Republic of Serbia represents the continuous improvement and development of acquired knowledge, skills, attitudes and behaviors, as well as the adoption of new ones arising from the practice of scientific research and new legal arrangements, with the aim of lawful, efficient and safe performance of tasks and it is mandatory for all employees in the Ministry.

Professional training is organized and implemented by the Ministry in accordance with the program of professional training, which is adopted annually by the Ministry of Interior.

In the period from 1 January 2011 to date, through the professional training of employees in the Ministry - not only through the program of professional training, and other activities carried out on this program, but also in cooperation with other bodies and organizations, various forms of professional training (obligatory lectures, seminars, instructive seminars, seminars, training of trainers, etc.) were realized, which are aimed at fostering and developing the acquired knowledge, skills, attitudes and behaviors, as well as the adoption of new ones, in the area of recognizing and responding to discrimination and the protection of human and minority rights, in relation to the following topics: Police work with marginalized, minority and socially vulnerable groups; Police ethics - for the preservation of personal and professional integrity; Police treatment of juvenile offenders and damaged minors; Commission for the implementation of standards of police action in the field of prevention of torture; Implementation of anti-discrimination policies; Constitutional protection of human and minority rights; Domestic violence and institutional protection; Police actions in accordance with a special protocol on police action in cases of violence against women in the family and in intimate partner relationships; Legal provisions that regulate the issues of human trafficking, illegal migration and trafficking in human beings; Functioning of an asylum system in the Republic of Serbia; Course for combating trafficking in human beings; Taking measures and actions by police officers against migrant workers in the Republic of Serbia in the state of increased influx of migrants; Training in the field of equality and non-discrimination.

**16) Comment on paragraph 55**

Ministry of Interior of the Republic of Serbia, in cooperation with relevant government authorities and other entities, with the obligation to recognize the needs of joint operation and responsible participation, continuously undertakes a series of measures and actions in order to effectively combat violence and misbehavior at sports events. Also, aware of the fact that effective opposition to violence at sports events can be achieved through appropriate social reaction, primarily on normative and operational levels, close cooperation with relevant state institutions (prosecution, courts, misdemeanor bodies, centers for social work, Ministry of Youth and Sports) and organizers of sports events is initiated and realized.

**17) Comment on paragraph 56**

Ministry of Interior of the Republic of Serbia is dedicated to the fight against racism and racist behavior at sports events and fully supports the position of the European Commission against Racism and Intolerance that persons who exhibit such behavior have no place at sports events. In this regard, we indicate that the members of the Ministry of Interior, during taking measures of securing all sports events held in the territory of the Republic of Serbia, continuously undertake a series of measures and actions in order to identify the perpetrators of crimes and offenses, i.e. in order to collect the available evidence for the prosecution of these offenses, in line with the fact that since 2010, a total of 348 offenses of Art. 317 of the Criminal Code have been identified, which were carried out by 193 natural persons, of which 30 criminal offenses are "Inciting national, racial and religious hatred and intolerance" committed at sports events. Also, the Ministry of Interior, consistently and with maximum engagement of available capacities, undertakes legal proceedings and actions aimed at preventing violence and misbehavior at sports events, and to this end, among other things, implements security measures/prevention measures of "Prohibition of attending certain sports events", which are handed down through final judgments by the competent courts to the perpetrators of crimes and offenses in

connection with sports events, which prevents their presence at sports events in a given period of time. Conducting the institute "Prohibition to attend certain sports events", is one of the mechanisms of state authorities to exclude persons who have been identified by the law and convicted through a legal procedure from sports events in the timeframe prescribed by the competent court.

**18) Comment on paragraph 58**

Instead of "32 cases in 2013, a slightly higher number in 2014", write "In 2013, 24 cases were recorded, and in 2014, 32 cases were registered."

Data source in footnote 73: NDI 2015: 11 not available to the public.

**19) Comment on paragraph 59**

During 2014, 2015 and 2016, activities were undertaken and followed daily by all the electronic and print media, internet portals, communication with LGBTI activists was achieved and information was collected from other state bodies, international police organizations and foreign police services of all information on security and other preparations for the organization of security of the public gathering in motion "Pride Parade", "Trans Parade," "Pride of Serbia" and "Pride Week".

Two Pride Parades in 2014 and 2016 took place calmly and without incidents. In 2015, within Pride Week, which lasted from 14 to 21 September in Belgrade, a series of cultural and artistic events were held, as well as a discussion on topics that are relevant to the LGBTI community in Serbia. Pride walk and the first gathering of Trans\* Persons Pride was held on 20 September 2015, without incident, while in 2016, Trans Pride took place without any incidents and with minimal security measures. Representatives of international organizations and national institutions were also present. The Government has in this way shown willingness to provide freedom of movement, and the events were an opportunity for Serbia to show devotion to the ideas of tolerance and respect for diversity. It is estimated that these meetings and conferences in motion were attended by: in 2016 - 1,200 participants (Pride Parade and Pride Serbia); in 2015 - 1100 participants (Pride Parade and Trans Parade) and in 2014 - 1,000 participants (Pride Parade).

Practice also shows professional progress of the police members regarding the protection of LGBTI people from violence, as well as employees in social welfare centers that are adequately trained in the handling of LGBTI people and their families. Implemented trainings were attended by 1,000 employees from 146 centers for social work. Advanced training continued in 2015 and 2016, and it was attended by approximately 600 employees in centers for social work and over 200 LGBTI people. A publication was also made entitled "Recommendations for an adequate answer of the social protection system to the needs of LGBT persons and their families." The trainings were conducted by the Association Rainbow and the Office for Human and Minority Rights with the support of the Council of Europe and the British Embassy in Belgrade and training was conducted in the centers for social work throughout Serbia in order to increase staff capacity to provide services to LGBT persons and their families.

**20) Comment on paragraph 61**

We note that drone which flew over the Stadium during the game of national teams of the Republic of Serbia and Republic of Albania had a flag of so called "Great Albania", non-existent State and not the flag of the Republic of Albania, which constitutes a direct provocation, which has not been concluded in ECRI's report.

The Police officials, following the football game of the national teams of the Republic of Serbia and Republic of Albania in Belgrade, has as of 17<sup>th</sup> October 2014

taken all the necessary activates to protect the facilities owned by minority communities trough constant presence in the near vicinity of the facilities and trough increased patrol and officers operative actions.

During the second half of October 2014 there was a total of 23 interethnic cases reported for the damages inflicted to the persons of Albanian and Turkish nationality and Goranci: nine cases have been registered in PU (police unit) in Novi Sad, 7 damages inflicted by the stoning of the facilities (“Vojvođanka”, „Aspek“, „Evropa“, „Baš Ćevap“, „Šar“, „Telep“ and „Has Plus“) and two verbal conflicts (both in front of the bakery „Fulji“). The total of 9 incidents resulted in criminal charges filed by the police officials for 7 criminal acts:

- instigating national, racial and religious hatred and intolerance - 5,
- preventing an official in discharge of duty of public security and keeping of public peace - 1,
- destruction and damaging another's possessions - 1.
- four criminal acts have been clarified: instigating national, racial and religious hatred and intolerance - 3 and preventing an official in discharge of duty of public security and keeping of public peace - 1 and against 11 persons of Serbian nationality criminal charges have been filed. Furthermore, offense charges have been filed against two persons of Serbian nationality.
- five cases have been registered in PU in Pančevo - damages to the bakery “Banatski klas” and “Sofra” - one each and “As Pek” - 2 and one graffiti directed against a person of Albanian nationality. All cases are not clarified so far and related to the damages to bakery “Sofra” in Jabuka police officials have gained information on possible perpetrators who have been served summons to PU in Pančevo.
- three cases have been registered in PU in Zrenjanin - damages to the bakery “Plavi Jadran”, “Zrenjaninka” and “Zlatni klas senior”. The police officials have filed criminal charges for the total of three incidents for:
  - instigating national, racial and religious hatred and intolerance - 1.

This criminal act has been clarified and the criminal charges were filed against a person of Serbian nationality. Furthermore, the criminal charges for two criminal acts of destruction and damaging another’s possessions were registered in the auxiliary registry. Likewise, the charges for offense have been filed against persons of Serbian nationality.

Two cases have been registered in PU in Sremska Mitrovica, the damages to the bakery „Arena“ for which the criminal charges for destruction and damaging another's possessions were filed against a person of Serbian nationality. The second incident, for activating an explosive device, the criminal charges for causing general jeopardy has been filed.

Two cases have been registered in PU in Sombor for damaging the bakery „David“, which resulted in criminal charges against a person of Serbian nationality for act of instigating national, racial and religious hatred and intolerance. For the second incident of activating explosive devices in two bakeries „Milenijum AS“ criminal charges were filed against unidentified perpetrator for causing general danger.

Two cases were registered in PU in Subotica - Palić on 15<sup>th</sup> October 2014, offending the Albanian owner of the bakery “Elita” by unidentified person and

damages to the facility of the Islamic Religious Community on 19<sup>th</sup> October 2014 in Subotica when unidentified persons set fire to the residential area of this religious facility and damaged the door.

Police officials have clarified the incident of damaging the facility of the Islamic Religious Community and have filed criminal charges against three persons of Serbian nationality for criminal act of instigating national, racial and religious hatred and intolerance.

The total of 23 incidents which, in the broadest sense, may be classified as interethnic and interreligious conflicts, criminal charges were filed for 12 criminal acts: instigating national, racial and religious hatred and intolerance (9) and one for each of the following: criminal act of causing general danger, destruction and damaging another's possessions and preventing an official in discharge of duty of public security and keeping of public peace. Out of the total 12 criminal acts, 9 has been clarified and against 18 persons criminal charges have been filed.

The offense charges against three persons were filed for three committed offenses defined in the Law on public peace and order.

#### **21) Comment of paragraph 64**

Public Prosecutors Offices dedicated great attention to trainings related to hate speech.

The cooperation of the Judicial Academy and Office for human and minority rights with the support of the OEBS Mission in Serbia, at the end of 2015, resulted in the commencement of the pilot program „The crimes of hate - training for representative of justice“, which is a part of continuous training of judges and public prosecutors and prosecutors assistants. The basic objective of the training is mastering the special skills related to the introduction of the definition of hate crimes including among other relevant international legal specifics of the hate crime as well as the practice of the European Court of Human Rights and UN Committee. The seminars have been held in April 2016, within the project, in Niš, Novi Pazar and Kragujevac while the final seminar was held on 12<sup>th</sup> May 2016 in Belgrade. The specific attention was dedicated to the application of the Article 54a of the Criminal Code.

Furthermore, at the seventh Coordination meeting aiming for the establishment of the fight against hate crimes in the Republic of Serbia, held on 1<sup>st</sup> and 2<sup>nd</sup> December 2016 organized by the Office for human and minority rights of the Government of the Republic of Serbia and OEBS Mission in Serbia it has been agreed to compose the Manual for public prosecutors and investigation of committed criminal acts of instigation of hate, that would promote the conducting of investigation, legal qualification and efficiency of criminal prosecution of the perpetrators of such criminal acts with the support of OEBS Mission in Serbia by the end of the first half of 2017.

#### **22) Comment of the title of the Chapter: Office of the War Crimes Persecutor**

We believe that the title of this Chapter due to its content is not adequate considering that the information noted in the following paragraphs is not within the full competence of the Office of the War Crimes Prosecutor and the recommendations for the implementation do not apply to the Office of Public Prosecutor.

### **23) Comment on paragraph on 68**

National Assembly has, on 31<sup>st</sup> March 2010 adopted the Declaration of the National Assembly of the Republic of Serbia condemning Srebrenica Massacre (“Official Gazette of RS”, no. 20/10) noting “The National Assembly of the Republic of Serbia strongly condemns the crime against Bosnian population in Srebrenica in July 1995 in the manner determined by the ruling of the International Court of Justice as well as all social and political processes and phenomena that lead to the consciousness that the fulfilment of one owns national goals can be achieved by the use of armed forces and physical violence against members of another nations and religion, expressing thereby the condolences and apologizes to the victims’ families for what has not been done to prevent this tragedy.” Bearing in mind the above mentioned we propose to reformulate and precise the quotes of the Draft Report in line with the mentioned Declaration.

Serbian Government considers such recommendation as mostly of political nature and it represents the interference in the political sphere whereby ECRI exceeds its mandate. In this context, it is important to bear in mind that the decision of the International Court of Justice on Srebrenica “speaks for itself” and that the politicians’ statement cannot effect the modification of the Court decision.

### **24) Comment on paragraph on 69.**

According to the Census in 2011, 83% of the population are Serbs, 12,9% are members of different national communities, while remaining 3,8% are in total persons who replied to the question of nationality declared their regional or local affiliation (e.g. Šumadinac, Vojvođanin, Nišlija etc), persons who used their Constitutional right and possibility not to declare themselves and persons who replied in the sense that it does not represent the declaration of nationality (e.g. alien, cosmopolite, Red Star etc).

It is not correct that there are “21 different ethnic groups” in Serbia, but 21 national councils of national minorities. In the census registered no. 1 “Nationality”, the data on number and territorial layout of 21 ethnic communities not exceeding the number of 2.000 members, while the data on the members of other ethnic communities are presented in summation (the fact indicated in the Foreword). In addition to the data published in the book 1, Statistical Office of the Republic of Serbia has published data on 24 ethnical communities with less than 2.000 members.

Furthermore, the precise data on Bosnian and Rumanians are not declared. Namely, in line with the Census 2011 there are 145.278 Bosnians and 29.332 Rumanians living in Serbia.

The last sentence in paragraph 69: “Up to the end of 2011, 17,590 foreigners obtained temporary residence and up to September 2016 less than 100 persons obtained refugee status or subsidiary protection”<sup>87</sup>, should be separated from the previous text since it does not relate to the Census 2011 (proposition - new paragraph).

In the footnote no. 86 it is stated: “The number of registered Roma in line with the Census 2011 is significantly higher than in the previous one due to the engagement of the Roma interviewers who carried out the census in a large number of, but not all Roma settlements.” The proposition is to omit the footnote no. 86 or to reformulate it to read: “The number of persons declaring themselves Roma in the Census 2011 is higher than in the previous Censuses.”

Namely, in the Census 2011 beside regular interviewers, persons of Roma nationality being among them, in cooperation with the National Council of Roma Minority around 700 additional Roma interviewers and coordinators were engaged

who assisted (provided logistical support) regular interviewers during population census in the areas with relatively high number of Roma. Along this action, a lot has been done with the media promotion of the Census and Roma representatives were affiliated members of the interview committees in Municipalities and Cities. Bearing in mind the above mentioned, it cannot be stated that the number of Roma in Census 2011 is higher than in earlier Censuses solely due to the engagement of Roma interviewers who carried out the census in a large number of Roma settlements and that the number of Roma would be even higher provided the Roma interviewers have been engaged in all Roma settlements.

In the footnote no. 87 it is stated that: “Due to the boycott of the Census 2011 among Albanian population the actual number might be significantly higher. The previous Census 2002 noted 61.647 persons declaring to be of Albanian origin.” Such a formulation is not acceptable considering that the Census has been boycotted by Albanian population only in Municipalities Bujanovac and Preševo and the statement that the actual number of Albanians might be significantly higher is not supported by any data. Furthermore, the Census 2002 has not registered data on the origin of population but on their national and ethnical affiliation.

It is proposed that the footnote no. 87 reads: “The Census 2011 has been boycotted by the majority of Albanian population in the Municipalities Bujanovac and Preševo. In the Census 2002 61.647 persons declared to belong to the Albanian national community.”

#### **25) Comment on paragraph on 74.**

By the application of “Strategy for the improvement of the status of Roma 2009-2015” numerous results have been achieved: by amendments to the Law on extra-judicial proceedings the supplemental registering in the birth register for the persons not registered in the birth register and the procedure for exercising this right have been prescribed. Thus the issue of personal documents for more than 25.000 persons of Roma nationality has been resolved; during the previous two years more than 1300 Roma have enrolled in pre-schooling system; the coverage of Roma children by primary education has increased and affirmative measures have been established for the enrolment of the pupils and students of the Roma nationality in high schools and universities; Roma high graders and students are motivated to continue schooling; the mentor system has been established to monitor the attendance; the approach of the access to the exercise of certain rights has been improved by introduction of Roma representatives in the process of public policies (pedagogical assistants, healthcare mediators, coordinators for Roma issues)<sup>1</sup>; as of the commencement of the implementation of the Strategy more than 30.000 Roma children have been vaccinated, the death rate of Roma children has decreased by 50%; the health insurance cards were issued for 16.330 citizens, 28.003 has selected physician, 11.177 women have selected gynaecologist, 1144 mammography have been done, total of 460.125 visits to the families, members of the families in a need of assistance and visits to implement healthcare training trough planned discussion, lectures, workshops have been conducted.

In the “Strategy for Social Inclusion of Roma 2016-2025”, the funds for realization, liability of responsible parties and monitoring the implementation are emphasized as the key preconditions for exercising strategic goals. Currently, the production of the Action Plan for Social Inclusion of Roma is in its final phase. The realization of the activities and measures in the Action Plan shall be provided for trough regular budget funds and with the support of IPA Funds and donations. The production of the financial plan, that is, the budget for Action Plan has been realized by the intensive participation of the representatives of competent Ministries, including political, operational and financial level of deciding. Following the adoption of the Action Plan, the regular coordination meeting of the projects for



Roma inclusion shall be organized in cooperation with the Office for European Integration and Team for social inclusion and decrease of poverty of the Government of Republic of Serbia aiming to the development of the cooperation with the donation community in implementation of the Action Plan. Furthermore, following one year of implementation, the revision of the Action Plan is planned to assess the effects and further improvement.

The Strategy stipulates that, in accordance with the Operative conclusions and Action Plan for Chapter 23, the Government of the Republic of Serbia incorporated Coordination authority for social inclusion of Roma that shall be responsible for coordination of all activities related to the inclusion of Roma defined in the Action Plan, for the implementation of the Strategy, for ensuring the establishment of sustainable normative and institutional conditions for the implementation of the strategic measures and for the management of the Strategy. The Draft Decision on incorporation of the Coordination Authority has been produced that shall be adopted during the following period. The Office for Human and Minority Rights and the Team for social inclusion and decrease of poverty shall support the Coordination Authority in monitoring and reporting on implementation of the Strategy and accompanying Action Plan.

In accordance with the Operative conclusions of the seminar on social inclusion of Roma in the Republic of Serbia (June 2015) the European Commission has committed itself to co-finance the implementation of the Strategy.

**26) Comment on paragraph 77**

Internally relocated persons from Kosovo and Metohija, have been acknowledged as multiple vulnerable category of Roma communities affiliates in the Strategy and Action plan for social inclusion of Roma in the Republic of Serbia. The Action plan, as regards housing, stipulates the solutions for internally relocated Roma from Kosovo and Metohija by financing programmes for improvement of the living conditions of internally relocated persons, including Roma. Related to the employment, the organizations of civil society are encouraged to develop programmes of agro-developments for internally relocated Roma who wish to engage in agriculture and/or cattle breeding. It is important to mention, as significantly important measures of improvement of the position of internally relocated Roma, the development of the system of free legal aid which is also accentuated in the Strategy and accompanying Action Plan.

**27) Comment on paragraph 80**

The term school mediator is not usual in the terminology of the educational system of the Republic of Serbia and should be replaced by the term “pedagogical assistants”.

**28) Comment on paragraph 82**

Trough the EU project “European support for Roma inclusion” supported by IPA 2012, 583 informal settlements in Serbia occupied by Roma communities has been mapped and Geographical-information system has been incorporated for monitoring and improvement of the housing conditions. The housing components of the project set as its main objective the preparation of 20 pilot Municipalities for application for grants anticipated in the scope of IPA Funds 2013 and directed towards the construction of the necessary infrastructure and improvement of the individual housing facilities in informal Roma settlements. Through this project the total of 13 urban plans in 11 Municipalities have been constructed.

During 2017 the project for improvement of the sustainable housing conditions shall be realized with the support of IPA 2013. The upcoming IPA programmes focus on housing area both as regards to the production of necessary technical

documentation as the precondition for sustainable housing and as regards to the improvement of the infrastructure and construction of facilities. It is also important that IPA 2017 currently in the programming process focuses on the area of social housing.

**29) Comment on paragraph 84**

The Law on housing and building maintenance has been adopted in December 2016 in accordance with the highest international standards in the area of human rights. Among other, the Law defines that the competent unit of local self-government in the course of preparing the draft decision on the necessity of the relocation with the relocation plan shall do so consulting and cooperating with the persons being relocated and organizations for the protection of human rights. The conclusions of the consultations are an obligatory integral part of the draft decision on the necessity of the relocation with the relocation plan. The self-government unit where the relocation is being conducted as well as other subjects competent to participate in this procedure shall individually or in cooperation with other competent authorities and subjects being relocated provide: fulfilment of basic needs for the period of maximum one month as of the date of relocation (basic rations and drinking water); adequate access to health and social care; access to the sources of income and potential place of employment or working arrangement; access to inclusive education system.

The relocation procedure cannot lead to the separation of the members of the family or household unless it has been so requested by the persons being relocated.

In this regard, apart from the mentioned mapping the adoption of this Law is of significant importance. Besides regular coordination meetings of the project for Roma inclusion, other activities shall be conducted with the objective to collect additional funds to improve the housing conditions. It is important to note that IPA 2017 program currently being programmed is focused on the area of social housing.

The Action Plan for Social Inclusion of Roma in the Republic of Serbia anticipates the funds from the budget of the Republic of Serbia, budget of the local self-government units and donations for realization of the measures and activities anticipated by this document.

**30) Comment to paragraph 85**

Having in mind that the field of Roma employment was separately discussed within the Strategy for Social Inclusion of Roma in the Republic of Serbia 2016 - 2025, and that measures stipulated by this document are focused on inclusion of Roma in working age to formal labour market, increase of employability and economic empowerment, particularly of Roma belonging to categories of multiple hard to employ persons, the adoption of the National Action Plan of Employment for 2017 is significant.

The employment policy in 2017 will focus on support to private sector and fostering of employment of primarily less employable persons from the records of the National Employment Service (youth 30 years of life, redundant staff, older than 50, persons without qualifications and with low qualifications, persons with disabilities, Roma, beneficiaries of financial social assistance of working age, long-term unemployed, youth with the status of children of fallen soldiers, youth who had/have the status of children without parental care, human trafficking victims and domestic violence victims).

According to data of the National Employment Service, as of 31 October 2016, there were 25,578 persons in the records of unemployed persons who declared

themselves as members of the Roma minority (out of which 11,834 women) - share of 3.72% in the total registered unemployment. From January - September 2016, 2,870 unemployed persons, members of Roma national minority, were included in measures of active employment policy. During the first ten months of 2016, 2,412 members of Roma national minority from the records of the National Employment Service were employed.

The Roma belong to one of the six categories of less employable persons, for the employment of whom an employer may obtain corresponding subsidies. In 2015, 249 private entrepreneurs with Roma employees were recorded and supported by IPA 2012 funds, along with 17 Roma companies employing about 60 Roma, out of which more than 50% are owned by Roma women.

Activities are ongoing on preparation of the Draft Law on Social Entrepreneurship, and it should contribute to improvement of living standard of citizens and reduction of unemployment through performing activities of public interest, as well as activation of special categories of the unemployed persons (Roma, persons with disabilities, persons older than 50, long-term unemployed, etc.), beneficiaries of rights and services of social protection in the working age. Harmonization of position with the Ministry of Finance on financial incentives and support measures in the field of social entrepreneurship is expected in the coming period, along with harmonization of the Draft Law text with social partners and other competent ministries and bodies, and drafting of the final text of the Draft Law.

Pursuant to the applicable constitutional provisions, there is no obligation of declaring the ethnicity. Based on voluntary declaring, we hereby inform you that there are three Roma employees in the Office for Human and Minority Rights only. Six consultants for Roma inclusion are hired by five government bodies dealing with policies for promotion of the status of Roma.

At the local level, in Serbian towns and municipalities, there are more than 300 members of Roma national minority working in the local government units - 64 coordinators for Roma issues, 175 teaching assistants in schools and preschool institutions, 15 teachers teaching Roma with elements of national culture in primary schools; 70 health mediators are working in healthcare. Office for Human and Minority Rights prepared harmonization and standardization of job descriptions for coordinators for Roma issues. Some of the coordinators' tasks concern communication and mediation between Roma community and local administration, providing support to civil society organization dealing with inclusion and promotion of Roma community at the local level, enhancement of intersectoral cooperation of teaching assistants, health mediators with the representatives of Centres for Social Work, National Employment Service branches and civil society organizations, as well as support to local governments in development and implementation of policies and programmes for Roma inclusion in accordance with the national and local strategic framework.

The Ministry of Public Administration and Local Self-Government prepared the Draft Law on Amendments to the Law on Protection of Minority Rights and Freedoms. The Minister of Public Administration and Local Self-Government formed a working group that prepared the Draft Law on Amendments to the Law on Protection of Minority Rights and Freedoms. Article 4 of the Draft Law stipulated amendments to Article 4 of the Law. First amendment is the amendment to paragraph 1 of that Article by which beneficiaries of measures for promotion of full and effective equality and conditions for undertaking such measures are determined in accordance with the relevant constitutional solutions. The same Article stipulates language corrections in paragraph 2, whereby the substantial amendment of paragraph 3 stipulates that measures for promotion of full and effective equality in employment, and/or benefits in case of termination of employment in public sector at all levels of

territorial organization, stipulated by provisions of separate laws governing legal employment status of public sector employees, are not to be considered as discrimination if such measures apply until a corresponding representation of members of national minorities laid down in those laws is achieved. The mentioned provision creates legal base for further legal regulation of measures for promotion of full and effective equality in order to achieve the corresponding representation of the members of national minorities in the public sector, whereby it is clearly stated that these measures will be temporary, or that they will apply until the corresponding representation is achieved, as defined by provisions of those law. This Article amends Article 4 of the Law by adding the new paragraphs 4 and 5, which, pursuant to the Constitution, generally stipulate that the Republic of Serbia, in accordance with the law, will provide conditions for efficient participation of members of national minorities in political life, representation of representatives of national minorities in the National Assembly of the Republic of Serbia and proportional presentation of national minorities in assemblies of autonomous provinces and local self-government units, as well as undertake corresponding measures for promotion of economic status of underdeveloped areas in which members of national minorities traditionally live.

Within Action Plan for exercise of minority rights, chapter VIII - Corresponding representation of members of national minorities in public sector and public enterprises, the Report of the Ministry of Public Administration and Local Self-Government, based on the Registry of employees, elected, nominated, appointed and hired persons at the beneficiaries of public funds.

Full name of the Law should be entered into footnote 104: the Law on Protection of Minority Rights and Freedoms.

In its daily work, the Ministry of Internal Affairs uses anti-discrimination policies and work programmes, fully aware of the significance of respecting the rights of disadvantaged, minority and socially vulnerable social groups and it implements the anti-discrimination policies. That is why, over the past several years, there have been substantial efforts aimed at suppressing all forms of discrimination, not only through training for police officers in the field of anti-discrimination which is integral part of educational activities of the Ministry of Internal Affairs and which is recognized as priority in the field of professional capacity building and training, but also through preventive measures aimed at including and motivating members of national minorities and women in deciding to become police officers.

Upon proposal of the Commissioner for Protection of Equality, the Ministry of Internal Affairs, in cooperation with the Organization for Security and Co-operation in Europe (OSCE) Mission to Serbia, delivered training for police officers in recognizing and fighting discrimination. One-day training sessions took place between 19 April and 23 June 2016 in seven cities in Serbia (Belgrade, Novi Sad, Niš, Kragujevac, Novi Pazar, Subotica and Vršac) , and were attended by 140 police officers. Also, the same training sessions were delivered on 5 and 6 December 2016 to 39 police officers from the following district police departments: Zrenjanin, Kikinda, Sremska Mitrovica, Šabac, Valjevo, Čačak, Užice, Požarevac, Smederevo and Jagodina.

In 2016, “Manual for capacity building of police officers on the concept of, recognizing and responding to discrimination” was also prepared as the basic textbook for theoretical classes in this field which will be compulsory classes for all the police officers, according to the Curriculum for professional training of police officers of the Ministry of Internal Affairs for 2017.

Basic Police Training Centre - BTPC, has implemented numerous activities regarding professional informing between 2011 and 2016, along with several promotional campaigns, workshops and roundtables the purpose of which is

integration of women and members of national minorities into the security sector of the Republic of Serbia.

Numerous advertising activities were organized with support from OSCE Mission to Serbia, aimed at promoting the police profession and basic police training among members of minority national communities in the Republic of Serbia - BTPC shared brochures "You can do it, too" in Serbian (both Cyrillic and Latin) and languages of national minorities. Since 2011, 29 advertising roundtables have been held during which the interested candidates, members of minorities, were introduced to the police profession, conditions for applying and enrolment, as well as the training in BTPC. Preparations for the interested members of national minority communities are organized every year, as well as 11 Open Days.

The Serbian Ministry of Internal Affairs announced a competition for enrolment of 460 trainees for the Basic Police Training Centre, according to the needs of Police Administration for the City of Belgrade, Police Administration in Zrenjanin, Police Administration in Pančevo, Police Administration in Zaječar, Police Administration in Niš and Police Administration in Pirot. The text of the competition was published on the web page of BTPC: [www.copo.edu.rs](http://www.copo.edu.rs), in Serbian and in languages of national minorities present on the territories covered by the competition (Bulgarian, Hungarian, Roma, Romanian, Slovak and Czech). The "European Roma Police Officers" association held a press conference on 5 January 2017, and together with the representatives of national councils of national minorities in the Republic of Serbia and the representatives of the Ministry of Internal Affairs, invited the members of all national minorities who meet the conditions of the competition to apply. At the end of February 2017, the Serbian Ministry of Internal Affairs will organize three two-day preparatory workshops for taking the entrance exam at BTPC in Sremska Kamenica, in cooperation with the Office for Human and Minority Rights, "European Roma Police Officers" police association, national councils, supported by OSCE Mission to Serbia.

We would also like to emphasize that the Article 23 of the Rulebook on criteria for selection of candidates for professional capacity building ('Official Gazette of the RS', number 97/2015) stipulates the following: "In accordance with territorial needs and the principle of national representation of the employees of the Ministry, the minister may adopt a decision to receive the additional number of trainees to the basic police training, provided that they meet the conditions stipulated in Article 3 of this Rulebook and that they passed the entrance exam".

When establishing the employment relationship with the Ministry of Internal Affairs, the candidates are neither obliged nor required to submit data on religious, national or racial affiliation, pursuant to the provisions on prohibition of discrimination of the Serbian Constitution, stipulating in Article 21 that all people are equal before the Constitution and the law. The primary criterion for establishing the employment relationship is the fulfilment of conditions laid down by the Law on Police and Rulebook on internal organization and systematization of jobs in the Ministry of Internal Affairs.

Please note that there is a job position of specialist for development of equal opportunities in HR policies in the Department for HR Strategies and Policies, Metrics and IT Support, HR Sector, Ministry of Internal Affairs, as the policy equal opportunities is recognized as priority in all aspects of HR management.

### **31) Comment to paragraph 87**

Official statistical data on the unemployment rate are obtained from surveys - Labour Force Survey, conducted by the Statistical Office of the Republic of Serbia. The lowest territorial level that may provide reliable data for this survey is the level of district, and not municipality. Data on the numbers of unemployed persons at the

municipal level may be obtained only from the National Employment Service, whereby the unemployment rate is calculated exclusively based on data from Labour Force Survey, everywhere in Europe and around the world.

Having in mind paragraph 87, and the fact that the Report does not mention source of data on the unemployment rate, we believe it is a free estimate or approximate number, without methodological support.

Table 1 is a part of the annual newsletter of the Statistical Office of the Republic of Serbia and provides rates of activity, employment, unemployment and inactivity from the Labour Force Survey for 2015, on national level and district level.

The unemployment rate was 17.7% in the Republic of Serbia in 2015.

The Albanian population is mostly present in Pčinja District, whereas the share of Bosniac population is the highest in Raška District. Table 1 clearly indicates that unemployment rates in Pčinja and Raška Districts are not substantially different from the unemployment rates in other parts of the Republic of Serbia.

**Table 1 - Rates of activity, unemployment and inactivity for the population aged 15 and older, per district, in 2015**

	Activity rate	Employment rate	Unemployment rate	Inactivity rate
<b>Serbia - total</b>	<b>51.6</b>	<b>42.5</b>	<b>17.7</b>	<b>48.4</b>
City of Belgrade	52.5	42.7	18.8	47.5
North Bačka District	51.1	45.6	10.7	48.9
Central Banat District	49.8	42.8	14.1	50.2
North Banat District	47.6	40.5	14.9	52.4
South Banat District	48.6	38.4	20.9	51.4
West Bačka District	47.9	38.2	20.3	52.1
South Bačka District	52.9	44.5	15.9	47.1
Sremska District	49.7	40.6	18.3	50.3
Mačva District	55.0	46.3	15.7	45.0
Kolubara District	59.4	51.5	13.2	40.6
Podunavlje District	50.2	40.7	18.9	49.8
Braničevo District	52.2	46.4	11.0	47.8
Šumadija District	51.3	41.0	20.0	48.7
Pomoravlje District	47.3	38.3	19.0	52.7
Bor District	45.5	37.8	16.9	54.5
Zaječar District	42.9	36.3	15.5	57.1
Zlatibor District	53.7	45.6	15.0	46.3
Moravica District	55.3	47.7	13.6	44.7
<b>Raška District</b>	<b>51.8</b>	<b>40.6</b>	<b>21.6</b>	<b>48.2</b>
Rasina District	55.1	46.7	15.2	44.9
Nišava District	50.4	38.0	24.7	49.6
Toplica District	52.8	43.5	17.5	47.2
Pirot District	49.8	39.4	20.9	50.2
Jablanica District	55.6	45.0	18.9	44.4
<b>Pčinja District</b>	<b>43.2</b>	<b>36.3</b>	<b>15.8</b>	<b>56.8</b>

Source: Statistical Office of the Republic of Serbia.

### **32) Comment to paragraph 89**

We proposed to amend the sentence “At the same time, it encourages the government to support economic activities in these fields, attract employers to these municipalities and recognize diplomas obtained in the neighbouring countries and Kosovo” with the sentence: “At the same time, it encourages the government to support economic activities in these fields, attract employers to all the municipalities and continue recognizing diplomas in accordance with the stipulated standards”

### **33) Comment to paragraph 90**

The National Assembly of the Republic of Serbia adopted the Law on Employees in Autonomous Provinces and Local Self Government Units in March 2016, the enforcement of which started on 1 December 2016.

For the first time, the Law comprehensively governs the system of labour relations in autonomous provinces and local self-government units. The purpose of this Law is to establish the fundamental principles of civil service system, based on standards accepted in contemporary comparative legal systems, thus meeting the basic assumption for full professionalization and depoliticization of staff in autonomous provinces and local self-government units.

The Law lays down the principle of equal availability of jobs. Article 19 paragraph 3 stipulates that national composition, gender representation and number of persons with disability should reflect composition of population among staff during employment, to the greatest extent possible.

Article 47 paragraph 2 stipulates that the Government will govern the details of the criteria for classification of job positions and criteria for job descriptions for civil servants, whereby it will take into account knowledge of language and scripts of national minorities, as a special condition for performing tasks required by those jobs that are of significance for exercising the citizens’ rights to official use of language and scripts of national minorities. When stipulating the criteria for classification of jobs and job descriptions for civil servants, the Government will particularly take into account the national composition of population and corresponding representation of members of national minorities, in order to achieve full equality among members of national minority and citizens belonging to the majority (paragraph 3). The same solution is stipulated for state employees (Article 185 paragraphs 1 and 2 of the Law).

Article 101 paragraphs 2 and 4 of the Law stipulate that the Government will adopt the Regulation governing the procedure for internal and public competition for filling of job positions, as well as which professional competences, knowledge and skills will be evaluated in the selection procedure, manner of their testing and criteria for selection for job positions, and by which criteria for selection for job positions will be established stipulating preference for equally qualified candidates - members of national minorities, in order to achieve equality among members of national minority and citizens belonging to the majority.

Article 190 of the law stipulates keeping of HR records, within which, among other, data pertaining to native tongue will be recorded (paragraph 2 point 2), whereby these data are recorded in HR records with written consent of staff, without declaring obligation of the staff (paragraph 5). Apart from the mentioned data, the same Article stipulates recording data pertaining to language in which primary and secondary schools and universities were attended (paragraph 2 point 3). The same Article (paragraph 4) also stipulates that the HR records should contain information about national affiliation of civil servants and state employees, pursuant to the

regulation governing the registry of employees in public administration in the Republic of Serbia, whereby the information about national affiliation of civil servants and state employees is recorded in the HR records with written consent of staff, without declaring obligation of the staff (paragraph 6).

In order to implement the Law on Employees in Autonomous Provinces and Local Self Government Units, the Serbian Government adopted the Regulation on criteria for classification and description of jobs of civil servants in autonomous provinces and local self-government units and Decree on criteria for classification and description of jobs of state employees in autonomous provinces and local self-government units. The mentioned bylaws stipulate that in an autonomous province, local self-government unit or a city municipality in which the use of official language and script of a national minority is established, the job positions including direct oral and written communication with the citizens will have a special requirement of knowledge of language and script of national minorities. The Serbian Government also adopted the Regulation on internal and public competition for filling of job positions in autonomous provinces and local self-government units, stipulating, among other, that if there is a need for employing members of national minorities who are insufficiently represented among staff, the advertisement will specify that those national minorities will have priority during selection and in case of equal evaluation of the qualified candidates.

It is also stipulated that if an executive job position is being filled, with a special condition regarding knowledge of language and script of national minorities, the advertisement will specify this condition, as well as possible written verification of its fulfilment.

We believe that this Law and the accompanying bylaws stipulate the affirmative measures pertaining to employment of national minorities, including Roma, giving high priority to their employment in public administration.

#### **34) Comment to paragraph 91**

The Law on Primary Education and the Law on Secondary Education stipulate the following: “For members of national minorities, teaching shall be delivered in language and script of a national minority, and/or bilingually, if at least 15 pupils decide to attend those classes during the enrolment into the first grade there. When teaching is delivered in a language and script of a national minority, the school shall provide lessons of Serbian for a pupil. When teaching is delivered in Serbian, lessons in the language of national minority with elements of national culture as elective course will be organized for a pupil - member of the national minority.”

In this regard, in the school year 2016/2017, classes in languages of national minorities with compulsory studying of Serbian as non-mother tongue were organized on the territory of the Republic of Serbia. Classes in 9 languages (Albanian, Bosniac, Bulgarian, Hungarian, Romanian, Ruthenian, Slovak, Serbian and Croatian) are attended by 561,502 children in 1,367 primary schools (out of which 526,762 pupils attend classes in Serbian).

Regarding the education of pupils with developmental disabilities, classes are attended by 4,987 pupils - 4,508 in Serbian, 432 in Hungarian, 39 in Slovak, six in Ruthenian and two in Albanian.

For pupils - members of national minorities attending classes in Serbian, classes of elective course Mother tongue with elements of national culture are also organized. Mother tongue with elements of national culture is realized as an elective course in primary schools in the Republic of Serbia in 14 languages of national minorities, for 11, 509 pupils.



Elective course Mother tongue with elements of national culture is realized in almost 90% of local self-government units in the Republic of Serbia and in almost 30% of primary schools.

Classes in Serbian (including Serbian-English, Serbian-Italian, Serbian-German and Serbian-French), Hungarian, Hungarian-German, Albanian, Bosnian, Slovak, Romanian, Croatian, Bulgarian and Ruthenian are attended by 253,273 pupils in 100 secondary schools.

Secondary school for pupils with developmental disabilities - special classes are attended by 2,136 pupils - 2,062 in Serbian and 74 in Hungarian.

During school year 2016/2017, the Ministry of Education, Science and Technological Development will make it possible for all the interested pupils in the Republic of Serbia to have the opportunity to study languages and culture of national minorities through various forms of extracurricular activities and additional classes (summer and winter schools, workshops...) or other forms of work. In June 2016, parents of primary school pupils filled in questionnaires about their interest in organizing such kind of studying of language and culture of national minorities. The results of the survey will define numbers and manners of realization to start during the school year 2016/2017.

**35) Comment to paragraph 97**

The Law on Prohibition of Discrimination stipulates that terms "discrimination" and "discriminatory treatment" stand for every unwarranted discrimination or unequal treatment, or failure (exclusion, limitation or preferment), of persons or group as well as members of their families, or persons close to them, in an open or covert manner, based on sexual orientation, among other personal features. In performing their duties, executive authorities apply provisions of the Law on Prohibition of Discrimination.

**36) Comment to paragraph 102**

The source mentioned by ECRI: NDI 2015: is not available to the public and the source of information cannot be verified.

**37) Comment to interim additional recommendations**

Election and termination of mandate of MPs established by the Law on Election of MPs ('Official Gazette of the RS' Nos 35/00 ... 28/11 - CC, 36/11), pursuant to the Constitution of the Republic of Serbia ('Official Gazette of the RS' No 98/06).



