

ECRI REPORT ON ROMANIA

(fifth monitoring cycle)

Adopted on 3 April 2019

Published on 5 June 2019

ECRI Secretariat
Directorate General II - Democracy
Council of Europe
F - 67075 STRASBOURG Cedex
Tel.: +33 (0) 390 21 46 62
E-mail: ecri@coe.int

www.coe.int/ecri

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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 6 December 2018, except where expressly indicated, developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fourth report on Romania on 19 March 2014, progress has been made in a number of fields.

Amendments in 2015 to the Government Emergency Ordinance (GEO) No. 31/2002 on prohibiting organisations of a fascist, racist and xenophobic character widened its scope of application by including prohibition of legionary symbols and acts related to the Holocaust. In July 2018, the authorities also adopted specific criminal legislation regarding measures to prevent and combat antisemitism.

It is now possible to generate data on racially motivated offences in the Ministry of Justice's electronic tool for court statistics (ECRIS). In October 2015, the General Prosecutor's Office issued a strategy to enhance the effectiveness of criminal investigations conducted into allegations of ill-treatment by law enforcement officials.

Measures to address the educational needs of Roma pupils have been put in place, including scholarships for pupils in secondary and professional schools and free transport. Progress in the fight against school drop-outs has been made, following the adoption of the National Strategy for the reduction of early school leaving (2015-2020). Moreover, in 2016, a Ministerial Order on the prohibition of school segregation in pre-university schools, which focuses on equal access to quality education, was adopted.

Persons who have been granted refugee or subsidiary protection status have the right to work, as well as access to health care, education and social housing, on an equal footing with Romanian citizens. There is an integration programme for persons granted international protection which offers Romanian language and culture courses and assistance with obtaining non-reimbursable financial support.

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

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

Racist and intolerant hate speech in public discourse as well as on the internet is a widespread problem: the main targets are Roma, the Hungarian minority, LGBT persons and the Jewish community. Violent attacks against these groups or their property also occur sporadically.

Accounts of alleged cases of racial discrimination and misconduct by the police and racial profiling, against Roma in particular, continue to be reported. There is still no independent body entrusted with the investigation of such cases.

The responses of the Romanian authorities to these incidents cannot be considered fully adequate. There is no coherent and systematic data collection on hate speech and hate-motivated violence. Criminal action is almost never taken and the provisions on racist motivation as an aggravating circumstance are also rarely applied. The level of underreporting is high and the lack of prosecutions does not provide an effective deterrent against such crimes. The insufficient level of knowledge and expertise among the law enforcement bodies and the judiciary in recognising hate crime prevents proper qualification of such crimes.

Furthermore, the level of awareness among the general public on equality and non-discrimination, especially about their rights and their access to justice, is relatively low. The authorities have still not adopted the draft National Strategy on Equality, Inclusion, Diversity (2018-2022) which envisages measures to this end.

Romania's National Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority has had little impact so far. The implementation of this strategy has suffered considerable financial constraints. Roma occupy the most disadvantaged position in the labour market. The shortage of social housing persists and the forced

evictions of Roma from their irregular settlements continue, often without offering any re-housing solutions.

There is also a growing homo- and transphobic climate in Romanian society and LGBT persons experience different forms of discrimination in their daily lives.

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

The authorities should adopt the National Strategy on Equality, Inclusion, Diversity (2018-2022) without any further delay.

The authorities should put in place a system to collect data and produce statistics offering an integrated and consistent view of cases of racist and homo/transphobic hate speech and hate crime brought to the attention of the police and pursued through the courts and make this data available to the public.*

The authorities should define and prohibit racial profiling by law and provide for a body which is independent of the police and prosecution authorities entrusted with the investigation of alleged cases of racial discrimination and misconduct by the police.

The authorities should provide further training for police, prosecutors and judges on how to deal with racist and homo-/transphobic acts of violence, including improved procedures for recognising bias-motivations. Furthermore, in order to address the problem of underreporting, the authorities should enhance cooperation between the police and vulnerable groups, in particular the Roma and the LGBT community.*

The Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority from 2014 to 2020 should be revised systematically to include more targeted measures and success indicators to measure its impact. This should be done in close cooperation with local authorities and members of the Roma community, and adequate funding should be allocated for the strategy to be effective. An institutionalised approach to accountability between central and local authorities should also be ensured.

The authorities should amend the Law on Housing to establish clear and uniform criteria for allocating social housing which prioritise vulnerable groups, including Roma people as well as ensure that housing allocation is transparent and non-discriminatory.

Legislation should be developed on gender recognition and gender reassignment, in line with international standards and expertise. An action plan should be adopted to combat homophobia and transphobia in all areas of everyday life.

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

FINDINGS AND RECOMMENDATIONS

I. Common topics

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

- Criminal law

1. Criminal law provisions corresponding to ECRI's General Policy Recommendation No. 7 (GPR No. 7) on national legislation to combat racism and racial discrimination can be found in the Criminal Code² and the Government Emergency Ordinance (GEO) No. 31/2002 on prohibiting organizations of a fascist, racist and xenophobic character and the glorification of those found guilty of crimes against peace and humanity (hereafter GEO no. 31/2002). ECRI takes positive note of the amendments to this GEO in 2015, which enlarged its scope of application by prohibiting legionary symbols³ and acts related to the Holocaust, including on the territory of Romania.⁴ ECRI also welcomes the adoption of specific criminal legislation⁵ in July 2018 regarding measures to prevent and combat antisemitism. The following analysis focuses mainly on the lacunae.
2. Article 369 of the Criminal Code criminalises incitement to hatred or discrimination, using any means, against a category of individuals, with punishments of fines or up to three years' imprisonment. The scope of this provision is limited to protecting only a grouping of persons and does not include acts against an individual, as recommended in GPR No. 7 § 18 a. There is also no reference to incitement to violence or mention of any grounds. The authorities stated that this provision should be read together with Article 77(h) of the Criminal Code, according to which it shall be considered as an aggravating circumstance if a criminal offence is committed on account of a person's - *inter alia* - race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion, social origin or similar grounds (§ 21 of GPR No.7). ECRI nevertheless notes that the grounds of national origin, colour, citizenship and gender identity⁶ are missing and recommends the explicit inclusion of these grounds.
3. In its fourth report (§ 33), ECRI recommended prohibiting public insults and defamation against a person or a grouping of persons on the grounds of their race, colour, language, religion, citizenship or national/ethnic origin, as per GPR No. 7 § 18 b. However, the Criminal Code still contains no reference to this effect, and while threats are an offence under Article 206, as called for in GPR No. 7 § 18 c, no grounds are mentioned.

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

² Criminal Code of Romania (entered into force on 1 February 2014); ECRI notes that a Government Emergency Ordinance (GEO) has the same force as primary legislation, but it requires the approval a posteriori of the Parliament.

³ The Legionary Movement is understood as a fascist organization that was active between the years 1927-1941 under the names of "Mihail Archangel Legion", "Iron Guard" and "All for the Country".

⁴ Under Article 2 (e) of GEO 31/2002, Holocaust on the Romanian territory is defined as the systematic persecution and annihilation of the Jews and the Roma, supported by the Romanian state authorities and institutions in the territories administered by them between 1940 and 1944.

⁵ Law no. 157/2018 (adopted on 20 June 2018 and entered into force on 4 July 2018).

⁶ GPR No.7 does not contain these grounds, however, they are relevant for sections I.2, I.3 and II.2 of this report.

4. ECRI recommends amending the Criminal Code to include the following elements: the offences of incitement to violence and public insults and defamation of a racist nature. The offences of incitement to hatred and discrimination should apply to individuals as well as groups, as recommended in GPR No. 7 § 18 a. The grounds of national origin, colour, citizenship and gender identity should also be included into all the relevant provisions, including as an aggravating circumstance.

- **Civil and administrative law**

5. ECRI notes that Article 4 (2) of the Constitution provides that Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin. The list of protected grounds provided by the Constitution is exhaustive and the grounds of colour, citizenship, sexual orientation and gender identity are missing.⁷ Article 30 (7) prohibits incitement to violence to national, racial, class or religious hatred and to discrimination.
6. Article 2 of the Government Ordinance (GO) no. 137/2000 on the prevention and sanctioning of all forms of discrimination (hereafter Anti-discrimination Law) prohibits direct and indirect discrimination and sets out an open-ended list of protected grounds, including race, nationality, ethnicity, language, religion, social status, beliefs, sex and sexual orientation. National origin, colour, citizenship and gender identity are not listed. ECRI recommends the explicit inclusion of these grounds throughout the Anti-discrimination Law. The analysis below focuses on areas of GPR No. 7 that have not been covered or remaining gaps, in particular following the recommendations in ECRI's fourth report, which referred to the Anti-discrimination Law (§§ 43-46).
7. In its fourth report (§ 44), ECRI recommended that the authorities prohibit discrimination by association; announced intention to discriminate and inciting and aiding another to discriminate as per its GPR No. 7 § 6. The authorities informed ECRI that discrimination by association is applicable through case law based on the jurisprudence of the European Court of Justice (ECJ).⁸ While ECRI confirms this, it notes that the rest of the recommendation has not been implemented and these gaps remain. Article 2 (2) of the Anti-discrimination Law, on the other hand, prohibits ordering someone to discriminate. ECRI notes that the terminology might generate confusion as the wording used in Romanian is 'order', hence, implying a hierarchical position, and not 'instruction', which has a wider application.⁹ The authorities brought the case law of the National Council for Combating Discrimination (hereafter the NCCD) to ECRI's attention, which confirms that the term is interpreted broadly in order to avoid limiting the prohibition of discrimination to hierarchical relations.
8. Contrary to GPR No. 7 § 6, segregation is only prohibited in the field of education under Article 4 of the Framework Order no. 6134/2016 on the prohibition of school segregation in pre-university schools.
9. While Article 1 (4) of the Anti-discrimination Law prohibits discrimination by public authorities, it does not expressly mention their positive duty to promote equality in carrying out their functions, as called for in GPR No. 7 § 8. Moreover, although Article 2 of the Law No. 98/2016 on Public Procurement contains a reference to the principle of equal treatment and anti-discrimination, this reference merely obliges the contracting authorities not to discriminate among candidates during the call for tenders process, and not, as advocated in GPR No. 7 § 9, to ensure that

⁷ See footnote 6.

⁸ Case C-303/06 Coleman v. Attridge Law and Steve Law [2008] ECR I-5603.

⁹ EELN (2017a): 51-52.

parties to whom contracts, loans, grants or other benefits are awarded respect and promote a policy of non-discrimination.

10. Romanian legislation provides for easily accessible judicial and/or administrative proceedings, including conciliation, in discrimination cases. Victims of discrimination may apply to the relevant state body, the NCCD, the People's Advocate (hereafter the Ombudsperson) or the court. These provisions are in line with recommendations in ECRI's GPR No. 7 §§ 10 and 12.
11. Article 27 (4) of the Anti-discrimination Law shifts the burden of proof, as per GPR No. 7 § 11. With regard to GPR No. 7 § 13, while Article 18 of the Anti-discrimination Law holds the NCCD responsible for monitoring the conformity of all laws and administrative provisions with the prohibition of discrimination, it does not grant the latter powers to initiate proceedings before the Constitutional Court concerning their constitutionality. The possibility of bringing cases of discrimination triggered by laws or ordinances before the Constitutional Court is currently assigned to the Ombudsperson (Article 146 of the Constitution).
12. There are different provisions in the Civil Code (Articles 30, 1179 and 1246-1250) and Labour Code (Article 56) which make it possible to amend discriminatory provisions or declare them null and void in individual or collective contracts or agreements, as referred to in GPR No. 7 § 14.
13. Article 2 (5) of the Anti-discrimination Law prohibits harassment, as recommended in GPR No. 7 § 15.
14. Despite ECRI's recommendation in its fourth report (§ 95), an obligation to suppress public financing of organisations, including political parties, which promote racism has not yet been introduced in Romanian legislation, as per GPR No. 7 § 16. On the other hand, Article 9 of the GEO No. 31/2002, provides for the possibility of dissolution of such organisations, complying with GPR No. 7 § 17.
15. In its fourth report (§ 46), ECRI recommended that organisations such as associations, trade unions and other legal entities which have a legitimate interest in combating racism and racial discrimination are entitled to bring civil cases, even if a specific victim is not referred to. ECRI notes that Article 28 (1) and (2) of the Anti-discrimination Law allows these bodies to initiate such proceedings in line with GPR No. 7 § 25.
16. ECRI recommends that the authorities amend the anti-discrimination legislation to bring it in line with its General Policy Recommendation No. 7. In particular, the legislation should include i) national origin, colour, citizenship and gender identity in the list of prohibited grounds of discrimination; ii) segregation; announced intention to discriminate, inciting and aiding another to discriminate; iii) a legal provision placing public authorities under a duty to promote equality in carrying out their functions; iv) the express duty to ensure that those parties to whom public authorities award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination; and v) the obligation to suppress the public financing of organisations or political parties which promote racism.

- **Equality bodies**¹⁰

- *The People's Advocate (the Ombudsperson)*

17. The People's Advocate (the Ombudsperson), which was set up in 1991, is an independent public authority. It is a typical Ombudsperson with competence only in the public but not the private sector and has no specific mandate to combat

¹⁰ The term "national specialised bodies" was updated to "equality bodies" in the revised version of GPR No. 2 which was published on 27 February 2018.

racism, racial discrimination, xenophobia, antisemitism and intolerance. ECRI was informed that the Ombudsperson has handled around 600 complaints (out of 31 000) related to discrimination in the last four years. ECRI notes that the Ombudsperson issues recommendations that cannot be subjected to parliamentary control or court review. In its recommendations, it only notifies the public authorities of their illegal acts or actions, but cannot issue any sanction.

- *National Council for Combating Discrimination (the NCCD)*

18. The National Council for Combating Discrimination (NCCD), which was set up in 2002, is an independent authority supervising compliance with the Anti-Discrimination Law. The competences of the NCCD include preventing discrimination on all grounds via awareness-raising and education campaigns, mediating between the parties concerned, providing support for victims of discrimination including assistance to victims, investigating and sanctioning discrimination, including ex officio, monitoring discrimination, preparing independent surveys, and issuing reports and recommendations. The NCCD also presents draft laws in the field of combating discrimination to the Government and drafts opinions to ensure the harmonisation of other legal provisions with the non-discrimination principle (see § 11). The NCCD may impose administrative sanctions (fines or warnings) which can be appealed before the courts.
19. ECRI notes that both the Ombudsperson and the NCCD have most of the powers and competencies listed in ECRI's GPR No. 7. While the NCCD does not have legal standing to bring a case before the courts, it is subpoenaed as intervening party in all cases of discrimination filed directly with the court. According to reports, this has contributed to straining further the already limited resources of the NCCD and generated a serious backlog.¹¹
20. Both the Ombudsperson and the NCCD lack the financial and human resources necessary to carry out their mandates effectively. The ban on recruitment in the public administration had a further negative impact (the NCCD has 64 staff out of 97 posts available) and this has resulted in reduction on their activities, in particular with respect to awareness-raising. On the other hand, ECRI points out that both institutions deal with cases of discrimination. In practice, this may result in overlapping jurisdiction, in relation to the acts of public authorities, leading same cases being handled by both institutions simultaneously. In ECRI's view, the risk of having overlapping competences without effective channels of communication may raise issues of legal uncertainty and hence, it is important to ensure effective collaboration between two institutions.
21. ECRI recommends that the authorities i) allocate both institutions sufficient financial and human resources, including funding for awareness-raising campaigns regarding non-discrimination and equality, and ii) avoid overlapping jurisdiction and enhance cooperation and coordination between the Ombudsperson and the NCCD in dealing with cases of discrimination.

2. Hate speech¹²

- Data

22. According to the OSCE-ODIHR, data on hate crimes, including hate speech incidents, is collected by the General Prosecutor's Office, the police, the Ministry of Internal Affairs and the Superior Council of Magistracy and are published as part

¹¹ EELN (2017a): 113.

¹² According to ECRI's GPR No. 15 on combating Hate Speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

of general crime statistics with no recording of bias motivation (see § 48).¹³ Data protection laws generally do not allow the recording of data on ethnic origin or religion. However, ECRI recalls that such data collection should be carried out in accordance with the principles of confidentiality, informed consent and individuals' voluntary self-identification as members of a particular group.¹⁴ Pursuant to statistics provided by the Public Ministry (another name for the General Prosecutor's Office), in the period between 2014 and 2017, only two out of 113 cases that were handled by the prosecutors' offices under Article 369 (incitement to hatred) of the Criminal Code went on to prosecution, whereas five out of 77 cases reached the courts under several articles of GEO No. 31/2002. The Superior Council of Magistracy data (tracked from Electronic Court Record Information System, ECRIS) also suggest that, between 2016 and 2018 (until March), only five cases were tried as violations of Article 369, resulting in a conviction in only one case.

- **Political and other forms of public discourse**

23. In its last report (§ 96), ECRI recommended that all the political parties should take a firm stance against all forms of racial discrimination and convey a clear political message in favour of diversity and pluralism. ECRI notes that racist statements by politicians, in particular at local level, continue to be a problem. Many sources have stated that as a result of political gains in local elections through anti-Roma rhetoric and more nationalistic discourse, the use of hate speech, including by mainstream political parties, has become commonplace.¹⁵ For example, a local councilor in Mahmudia stated that 'the best Gypsy is a dead Gypsy'.¹⁶
24. Like other international bodies,¹⁷ ECRI notes with great concern the persistent and high incidence of anti-Gypsyism, resulting in Roma constantly enduring hatred and insults in public life. Roma people are often portrayed as 'thieves, liars, lazy'¹⁸ and systematically linked with criminality, which reinforces bias and increases their social exclusion.¹⁹ For instance, on International Roma Day in 2016, a banner with racist inscriptions was hung on a tent set up by the Roma Cultural Center and the tent was vandalised.²⁰
25. Reports²¹ suggest that derogatory public statements have often been expressed in the context of the longstanding tension persisting between the Hungarian national minority and the state authorities, mostly with political overtones arising from the discussion over demands for 'autonomy'²² and the use of Székler²³ flag and

¹³ OSCE-ODIHR, Hate Crime Reporting: Romania, <http://hatecrime.osce.org/romania>

¹⁴ This is also in line with article 5 and 6 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe. See also EU's General Data Protection Regulation (EU) 2016/679 (GDPR).

¹⁵ See similar, CoE, FCNM Advisory Committee (2018): 19; Political Capital Institute (2018):10.

¹⁶ ActiveWatch (2016): 11.

¹⁷ UN CAT (2015): para.10; CommDH (2014):14: 166-170.

¹⁸ Carrera et al (2017): 76.

¹⁹ In 2015, a bill was proposed to change the official name 'Roma' to 'Tsigani' that was eventually rejected.

²⁰ ActiveWatch (2016): 13.

²¹ Mikó Imre (2017); UN Human Rights Council (2017b): para.8.

²² See ECRI (2014): § 166-168. ECRI notes that according to Law No. 141/2015, Széklerland is not allowed to use its own flag for not being a legally recognised administrative unit in Romania. Moreover, the High Court of Cassation and Justice of Romania delivered on 15 October 2014 a judgment where it found that the use of the flag Széklerland was discriminatory, given the lack of representation of the different ethnic communities living in Harghita county.

²³ The Hungarian minority is the largest national minority in Romania, comprising 1,2 million people, including the Székler subgroup, who form the majority population in two counties - Covasna and Harghita. ECRI considers that issues related to the right to express a separate identity can best be addressed in the context of the Framework Convention for the Protection of National Minorities (FCNM) and notes that Romania ratified the FCNM in 1995. For its last report, please see the Fourth Opinion on Romania (2018) of the CoE

symbols in public places. Recently, in January 2018, after a call for territorial autonomy by ethnic Hungarian parties²⁴, the then Romanian Prime Minister stated in a TV show that ‘if they fly Székler flag on institutions in Széklerland, all those responsible over there will be flying next to it’.²⁵

26. Despite the low number of asylum seekers coming to Romania, it was reported²⁶ that public opinion toward these persons switched from initial empathy to growing hostility²⁷ in recent years. A nation-wide poll in 2016 revealed that almost 90% of society was opposed to the settlement of refugees in the country.²⁸ Several media outlets also depicted asylum-seekers as invaders, while resorting to stereotypical portrayals of Muslim refugees.²⁹ Coinciding with this trend, the Romanian Government’s decision to approve the construction of a mosque in Bucharest in 2015 also stirred up a certain level of islamophobic sentiment, as in the example of the former President calling the mosque ‘a risk to national security’.³⁰
27. ECRI notes that LGBT persons are targets of a high level of prejudice and offensive language, including by mainstream politicians. For instance, in 2017, a member of the Senate made derogative remarks about homosexual persons.³¹ In 2018, a group of protesters interrupted the screening of an award-winning film chanting anti-LGBT slogans, claiming it violated traditional Romanian values.³² The recent referendum on changing the gender neutral definition of marriage (see § 91) also triggered an increase in hate speech and fuelled homophobia.³³

- **Hate speech by extremist groups**

28. ECRI considers that the New Right (Noua Dreaptă) movement³⁴ deserves mention because of its overt use of the Iron Guard³⁵ legacy through holding public events with anti-Roma and antisemitic themes and engaging in the systematic use of hate discourse against ethnic Hungarians, LGBT persons and immigrants. For example, in October 2017, at the National Opera in Cluj-Napoca, members of this movement disrupted a concert in which an Islamic call to prayer was recited as part of the performance.³⁶ ECRI is pleased to note that the New Right is not represented in the Romanian Parliament. On a related note, ECRI welcomes the banning of the political party, ‘All for the Country (Totul Pentru Tară)’ in 2015, due to its use of fascist symbols originating from the Legionary movement.³⁷

Advisory Committee on the FCNM: 19, 51 and 53; CoE Advisory Committee on the FCNM (2018b), Comments of the Government of Romania; US Department of State (2016): 41.

²⁴ On 8 January 2018, three ethnic Hungarian political parties from Romania adopted a joint resolution on autonomy.

²⁵ Realitatea.net (2018).

²⁶ US Department of State (2017): 14.

²⁷ For example, in February 2016, an NGO attempted to build a small refugee shelter in Arad but gave up after residents protested and signed a petition against it.

²⁸ US Department of State (2016): 22.

²⁹ European Islamophobia report (2017): 508-510.

³⁰ *ibid*: 506.

³¹ The Romania Journal (2017).

³² Balkan Insight (2018).

³³ EuroNews (2018); The Guardian (2018).

³⁴ Founded in 2000, this movement has been vocal in the extreme right landscape in Romania.

³⁵ i.e. praising the pre-World War II, fascist, antisemitic, Legionary movement. See footnote 4.

³⁶ Active Watch (2017): 24. The perpetrators were fined to 500 - 700 lei (app. 107-150 euros) for disrupting public order.

³⁷ The Bucharest Court of Appeal - Decision no. 215/A/5.4.2015.

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

29. Civil society indicated that hateful language is prevalent in traditional and social media, mostly towards Roma, LGBT persons, the Hungarian minority, the Jewish community and Muslims.³⁸ Some television channels were found to contain discriminatory comments, such as the B1 TV channel, after the presenter made blatantly racist remarks in numerous episodes of his programme -Banciu's World- targeting the Hungarian minority and Muslims. The arrest of two Hungarian extremists who attempted to detonate an explosive device on the Romanian National Day in 2015, in Târgu Secuiesc also generated negative media coverage about the entire Hungarian minority.³⁹
30. According to a project⁴⁰ on online hate speech run by the Elie Wiesel National Institute for the Study of the Holocaust (INSHR-EW), inflammatory discourse against the Jewish community is present in Romania.⁴¹ It appears mostly on anonymous platforms, nationalist websites or social networks and mainly involves displays of a classic racist, antisemitic nature or of conspiracy theories, including materials glorifying the Legionary movement. The opinion survey⁴² conducted by the same institute found that while 68% of the 1 014 adults surveyed had heard of the Holocaust, only 41% believed it had occurred in the country. Similarly, a book openly denying the Holocaust, which had been on sale for a year, was launched in 2016 at a well-known bookstore in Bucharest.⁴³ ECRI regrets that the authorities did not intervene with another book launch in May 2017 despite the prosecutor's and mayor's offices being informed of the event before it took place.⁴⁴
31. Concerns have also been expressed at reports by the media conveying stereotyped or even degrading images of women, especially Roma women.⁴⁵ ECRI recalls the particular danger of hate speech targeting women on account of their gender which is often coupled with one or more other characteristics.⁴⁶ It therefore encourages the authorities to take measures to combat the use of sexist hate speech, paying particular attention to Roma women.

- **Hate speech in sports**

32. ECRI notes sports events have continued to be a forum for incidents of hate speech. The Romanian Football Federation has imposed sanctions on several occasions and banned fans and players over racist behaviour during football matches. For example, during a match between the teams Sepsi and Dinamo Bucureşti in Bucharest in 2017, the fans of the host team chanted "Out with the Hungarians from the country".⁴⁷ Both parties were condemned to pay a fine of 10 000 lei (2 200 EUR) by the NCCD. Similarly, xenophobic statements were also reported at other sporting events, such as the handball match in 2016, where a

³⁸ Center for Legal Resources (2017): 37.

³⁹ ActiveWatch (2016): 15-16. ECRI notes that the perpetrators of this attack were convicted under Law No. 535/2004 on the prevention and combating of terrorism and sentenced to five years of imprisonment.

⁴⁰ The first leg of this project resulted in 2017 with a report based on a monitoring activity during April-December 2016 on hate speech against Roma and Jews in Facebook. See INSHR-EW (2017a). The second leg of the project is still ongoing. See INSHR-EW (2018).

⁴¹ According to the 2011 census, the Jewish population is numbered 3 519 individuals.

⁴² INSHR-EW (2017b).

⁴³ Shafir, M. (2016): 230. ECRI notes that there has been a criminal complaint following this incident which is still pending.

⁴⁴ US Department of State (2017): 27.

⁴⁵ CEDAW (2017): para. 16.

⁴⁶ See Preamble of GPR No. 15 and § 31.

⁴⁷ Daily News Hungary (2017). ECRI notes that Sepsi team is a professional football club based in Sfântu Gheorghe in Covasna County, where the majority population is of Hungarian minority.

player of African descent was called a 'monkey' by supporters, which led the NCCD to impose a fine against the sports club.⁴⁸

- **Measures taken by the authorities**

33. ECRI considers that hate speech is particularly worrying not only because it is often a first step in the path towards violence but also because of the pernicious effects it has on those who are targeted and on social cohesion in general. Appropriate responses include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as prevention, self-regulation and counter speech.
34. As for criminal responses, hate speech is covered by the criminal offence of incitement to hatred (Article 369 of the Criminal Code – see § 2. ECRI refers to its recommendation in § 4). Several articles⁴⁹ of GEO No. 31/2002 can also be used for hate speech incidents. As stated earlier (§ 22), the authorities informed ECRI that only two cases went to trial under Article 369 between 2014 and 2017 and only five under GEO No. 31/2002.⁵⁰ ECRI is astonished that so few cases of hate speech have reached court. Despite its recommendation in its fourth report (§ 36), ECRI regrets to note that the application of the provisions on incitement to hatred remains extremely limited, which in ECRI's view, sends a strong message to the public that hate speech is not a serious offence and can be engaged in with impunity.
35. ECRI strongly recommends that the authorities take urgent steps to ensure that anyone who engages in hate speech as covered in Article 369 of the Criminal Code is duly prosecuted and punished.
36. Regarding civil and administrative law responses, Romanian legislation also provides for the punishment of hate speech as a contravention under the Anti-Discrimination Law, the Audiovisual Law, the Law on Preventing and Combating Violence at Sport Games and the Law on Public Gatherings.
37. Although the applicable anti-discrimination legislation does not explicitly define hate speech,⁵¹ ECRI notes with satisfaction the resolute stance of the National Council for Combating Discrimination (NCCD) in such cases. For instance, in the case of comments of the former Prime Minister concerning the Székler flag (§ 25), the NCCD issued a sanction and ordered a public apology.⁵² Similarly, the case of racist remarks by B1 TV presenter (§ 29) resulted in sanctions being issued both by the NCCD and the National Audiovisual Council (NAC).⁵³ However, the case of local councilor (§ 23) could not be handled by the NCCD due to a procedural issue. In addition, ECRI was informed that the NCCD recorded 40 hate speech cases in 2016 and 43 in 2017 (partial data not covering the whole year). The main motivations behind the hate speech were nationality (34 cases), ethnicity (17 cases) and sexual orientation (13 cases).
38. However, various interlocutors informed ECRI that victims of hate speech are often confused regarding the legal safeguards as well as the competence of institutions - such as the NCCD and the law enforcement bodies – to investigate their cases. ECRI is concerned about the relatively low level of awareness among the general public about their rights and their access to justice despite the fact that one of

⁴⁸ NCCD, decision no. 182/2016; the fine was amounted to 5 000 lei (1 071 euros).

⁴⁹ Especially Article 4 and 5.

⁵⁰ According to Elie Wiesel Institute, in the period 2007-2015, only 7 out of 107 cases under GEO No. 31/2002 were sent to courts by prosecutors. INSHR-EW (2017c).

⁵¹ Under the Anti-Discrimination law, hate speech is mostly dealt under Article 15 which defines right to personal dignity.

⁵² NCCD Press Release (2018).

⁵³ Based on the information provided by the National Audiovisual Council; Active Watch (2016):11.

ECRI's priority recommendations to the authorities in the last report (§ 38) concerned conducting information campaigns about both the legislation on the fight against racism and the competent bodies that provide assistance and/or redress. In this respect, ECRI regrets to note that the authorities have still not adopted the draft 'National Strategy on Equality, Inclusion, Diversity (2018-2022)'⁵⁴, which envisages measures related to awareness-raising for different target groups as well as enhancing coordination between institutions dealing with hate crimes, including hate speech. In ECRI's view, implementing more dedicated and tailored measures, as foreseen in this draft strategy, in various areas such as education and public opinion with a view to tackling all forms of intolerance and to promoting inclusive democracy in society should be seen as a priority.

39. ECRI recommends that the authorities adopt the National Strategy on Equality, Inclusion, Diversity (2018-2022) without any further delay.

40. The National Audiovisual Council (NAC) is the regulatory body for public and private audiovisual media which oversees compliance with the Audiovisual Law and the Regulatory Code of Audiovisual Content.⁵⁵ Article 47 of the latter forbids broadcasting defamatory statements against a person based on – inter alia, race, ethnicity, religion, nationality, gender and sexual orientation. ECRI notes that there is no obligation for media service providers to refrain from disseminating hate speech on the ground of gender identity and therefore invites the authorities to add this ground to this legislation.

41. While sanctions for violations range from warnings to suspension of licence, the NAC can also impose fines. ECRI was informed that the NAC has issued 13 warnings for violation of incitement to hatred and discrimination since 2015. It appears that the NAC does not always provide an explicit recognition of hate speech in its decisions nor sufficiently underline the severity of its use. ECRI therefore encourages the NAC to ensure the thorough qualification of hate speech cases by strengthening its expertise and drawing the attention of those engaging in hate speech and the wider public with an explicit reaffirmation that its use is entirely unacceptable.

42. As regards the Internet, ECRI notes that there is a cybercrime unit in the police. It also takes positive note of the monitoring exercise of the Romanian Police in 2017, as part of the EU Commission's initiative for monitoring the reaction of IT companies to the 'Code of conduct on countering illegal hate speech online'.⁵⁶ However, the authorities informed ECRI that while the police currently do not have a permanent hate speech monitoring system due to lack of capacity, the setting up of a dedicated unit to this effect constitutes a priority.⁵⁷ On a related note, although ECRI is pleased to note that Romania is party to the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, it recalls that Romania has not withdrawn its full reservation to Article 5 paragraph 1⁵⁸ of the Protocol and therefore encourages the authorities to reconsider this aspect.

⁵⁴ ECRI understands that this Strategy was initially designed for the period 2016-2020. The draft is available <http://www.cncd.org.ro/proiect-strategie-eid-2018-2022>. The previous one expired in 2013.

⁵⁵ Articles 29 (1) and 40 of the Audiovisual Law no. 504/2002. The Regulatory Code is complementary and its Article 47 is used to punish incitement to hatred.

⁵⁶ http://europa.eu/rapid/press-release_MEMO-18-262_en.htm

⁵⁷ Under an ongoing project called 'Combatting hate crimes and violent extremism and increasing the quality of police service', financed by the Norwegian Financial Mechanism, the operationalisation of a unit dedicated to combating hate speech in the online environment is foreseen.

⁵⁸ Article 5 § 1 of the Protocol stipulates that " Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well

43. ECRI recommends that the authorities intensify the work of the cybercrime unit and provide it with appropriate technical and human resources to combat hate speech on the Internet.
44. Regarding self-regulation, in its fourth report (§ 95), ECRI urged the authorities to introduce a code of conduct in Parliament regulating and sanctioning any racist discourse made by MPs. Although the authorities mentioned that such a code of conduct is under parliamentary debate, ECRI expresses its disappointment that it has still not been adopted. Similarly, self-regulatory bodies in the media sector, such as the Romanian Press Club (CRP) and the Media Organisations Convention (COM), are reported to be passive and while their respective codes of ethics would contain measures on the prohibition of hatred, these codes are neither widely known nor enforced.⁵⁹ ECRI considers that more efforts should be made in strengthening ethical journalism and ensuring effective use of self-regulation mechanisms.
45. ECRI recommends that the authorities promote the self-regulation of public and private institutions, including elected bodies and political parties, to combat the use of hate speech. They should also encourage the adoption of appropriate codes of conduct which provide for penalties for breaches of their provisions, as well as the setting up of effective reporting channels. ECRI invites the authorities to draw on the basic principles set out in its General Policy Recommendation No. 15 on combating hate speech when examining these issues.
46. ECRI commends the Romanian Football Federation for having adopted an explicit provision on diversity and non-discrimination in its internal regulation. It also notes with satisfaction the initiatives of several state authorities including the Gendarmerie and the Department for Interethnic Relations, in, for example, the prevention campaign 'Invitation to Fair Play' and the 'Diversity Cup', which were launched with the Romanian Football Federation as a way of using sports to promote diversity.⁶⁰

3. Racist and homo/transphobic violence

- Data

47. The Romanian criminal legal framework contains two types of provisions on hate crimes: as an aggravating circumstance, as per Article 77 (h) (§ 2) of the Criminal Code and as individual crimes under the Criminal Code, such as torture based on any form of discrimination (article 282) and desecration of places or objects of worship (article 382) or special laws, such as GEO No. 31/2002. According to information provided by the Superior Council of Magistracy, there were 12 hate crime cases in 2014, 37 in 2015, 50 in 2016, 39 in 2017 and 28 in the first two months of 2018. 32 out of these 166 cases resulted in convictions. ECRI is not aware of the exact number of cases where Article 77 (h) was applied. The data reported to OSCE-ODIHR, on the other hand, show that the police recorded 25 hate crime incidents in 2014; 15 in 2015, 10 in 2016 and 1 in 2017. While there is no breakdown per criminal law provisions available, seven were indicated as homicide and ten as assault.
48. Expert bodies and civil society groups consider that hate crime is generally under-reported by victims due to a lack of trust in the willingness or ability of the authorities to investigate these cases effectively.⁶¹ ECRI considers that the Romanian authorities do not compile full statistics about the extent of racist violence. Although

as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics. See also ECRI (2014), para.5.

⁵⁹ ActiveWatch (2018): 59-66.

⁶⁰ See ECRI's General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport.

⁶¹ CoE, FCNM Advisory Committee (2018): 22; Center for Legal Resources (2015): 3, 31.

there are official figures submitted by different institutions to the OSCE-ODIHR, as already mentioned above (§ 47), each institution gathers the data as far as it relates to its own proceedings and often, such data does not give a full-scale overview. This fact should not, however, be seen as an indication of a low number of occurrences, but rather indicative of problems with regard to reporting, investigating and prosecuting acts of racist violence in Romania. In this respect, ECRI recalls that one of the priority recommendations to the authorities in its last report concerned devising a comprehensive data collection system on the application of criminal law provisions against racism and racial discrimination. As concluded earlier,⁶² while it is now possible to generate data on racially motivated offences (*hate motivation deed*) in the Ministry of Justice's electronic tool for court statistics (ECRIS), ECRI observes that, there is still⁶³ no systematic data collection on the number of reported incidents of racist hate crime, including hate speech, investigations carried out or prosecutions and sentencing. In addition, the separate recording of racist incidents by the General Prosecutor's office and the police fail to provide reliable and coherent data on hate crimes, which should include bias motivation. ECRI therefore reiterates its recommendation.

49. ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of cases of racist and homo/transphobic hate speech and hate crime brought to the attention of the police and pursued through the courts, and that this data is made available to the public.

- **Racist violence**

50. Pursuant to FRA-EU data, 33 antisemitic criminal cases were recorded between 2014 and 2016.⁶⁴ While no violent acts against persons occurred, sporadic cases of vandalism targeting the Jewish community have been reported. Media reports include attacks against a Jewish cemetery⁶⁵ that was vandalised a week after the national commemoration of victims of the Holocaust in Romania in 2017, and on the home of late Holocaust survivor Elie Wiesel in 2018.⁶⁶
51. Albeit rarely, refugees have been the targets of racist violence. In 2016, two refugees speaking Arabic were attacked, resulting in injuries.⁶⁷ In addition, NGOs have documented incidents of assaults against Muslim women wearing headscarves in public places.⁶⁸ ECRI notes that Muslim women wearing visible religious symbols are particularly vulnerable due to the intersectionality of gender and religion, which can lead to feelings of isolation within a larger community and hinder the building of inclusive societies.⁶⁹
52. ECRI notes with particular concern that Roma continue to be the targets of racially-motivated violence.⁷⁰ Several interlocutors informed ECRI that police stops and the use of force by law enforcement officials against Roma remain prevalent,⁷¹

⁶² ECRI (2017).

⁶³ On this point, ECRI welcomes the decision of the General Prosecutor's Office in 2017 on modifying the collection of statistical data at the level of the Public Ministry with a view to collect hate crime with bias motivation. The authorities informed ECRI that the modification process has been recently completed and data regarding 2018 are expected to be available as of 20 January 2019.

⁶⁴ FRA-EU (2017a): 60.

⁶⁵ Jewish Telegraphic Agency (2017).

⁶⁶ The New York Times (2018).

⁶⁷ UNHCR (2016).

⁶⁸ See the UNHCR contribution to the OSCE/ODIHR database <http://hatecrime.osce.org/romania>

⁶⁹ See also ECRI GPR No.5 on Combating intolerance and discrimination against Muslims.

⁷⁰ Similar observations were made by the UN Human Rights Committee. See UN HRC (2017): para. 13.

⁷¹ UN Special Rapporteur (2016): para. 24-29.

although official figures are lacking.⁷² According to the FRA-EU survey, 52% of Roma who were stopped by police perceived this practice as ethnic profiling in Romania.⁷³ The UN Committee against Torture (CAT) also expressed concern at reports of police abuse and pointed out the targeted practice of ‘administratively conveying’⁷⁴ Roma to police stations, by law enforcement officials, with increased risks of ill-treatment.⁷⁵ Similarly, in 2016, the Council of Europe’s Commissioner for Human Rights underlined the need to make further efforts to eradicate institutional racism against Roma.⁷⁶

53. ECRI is deeply concerned by these continuing allegations of police misconduct. The high profile case of Gabriel Daniel Dumitrache, a 26 year old Roma man who died overnight in a police station in Bucharest in 2014, was illustrative. In this respect, ECRI draws attention to the fact that since 2015, the European Court of Human Rights (ECtHR) delivered over 20 judgments condemning Romania for cases of police violence and the failure of the authorities to effectively investigate inhuman and degrading treatment by police, including racially motivated ill-treatment.⁷⁷ Given their serious nature, ECRI considers that these repeated cases indicate a persistent problem in the country (see also §§ 59, 60).

- **Homo-/transphobic violence**

54. Civil society points out that there is a hostile atmosphere towards LGBT persons in Romania which renders them targets of violence. The case of *M.C. and A.C. v. Romania*⁷⁸ before the ECtHR is a striking example: the applicants were attacked and injured by a group of people on their way home from an annual gay march. The ECtHR found that the Romanian authorities had failed to take into account possible discriminatory motives in the investigation of a homophobic attack and concluded that there had been a violation of Article 3 (prohibition of torture and ill-treatment) in conjunction with Article 14 (prohibition of discrimination) of the Convention. ECRI would like to emphasize the important message given by the ECtHR, which stated that treating violence and brutality arising from discriminatory attitudes on an equal footing with violence, where there were no such overtones, would be tantamount to official acquiescence to, or even connivance with, hate crimes.⁷⁹

- **Measures taken by the authorities**

55. While some positive trends have emerged in tackling racist and homo/transphobic violence since 2014, as pointed out below, ECRI encourages the authorities to continue and intensify their efforts.
56. Recalling the legal framework as noted in § 2 and § 47 above, ECRI urges the authorities to remedy any shortcomings in the light of its recommendation in § 4, including adding gender identity as a hate motive under Article 77(h). On the other hand, ECRI takes positive note of the reaction of the authorities to some of the violent incidents mentioned above. As concerns the attack on the tent at the Roma

⁷² In 43 cases of police brutality against Roma documented by the NGO Roma CRISS during 2006-2015, there were no convictions at the national level. See US Department of State (2016): 3.

⁷³ FRA-EU- MIDIS II (2017b): 72.

⁷⁴ Under Article 31(1)b of Law no. 218/2002 (the law on Romanian police).

⁷⁵ UN CAT (2015): para. 10.

⁷⁶ CommDH (2016).

⁷⁷ ECRI notes that the ECHR found that the Romanian authorities failed in their duty under Article 14 of the Convention, taken in conjunction with Articles 2 and 3 of the Convention in their procedural aspect, to take all possible steps to investigate whether or not discrimination may have played a role in the following cases: *Boaca and others v. Romania* (no. 40355/11, 12 January 2016); *Ciorcan and others v. Romania* (no. 29414/09 and 44841/09, 27 January 2015); *Lingurar and others* (no.5886/15, 16 October 2018).

⁷⁸ ECtHR (2016) *M.C. and A.C. v. Romania*, (no. 12060/12): §§ 113, 125.

⁷⁹ *ibid*: § 124.

Cultural Center (§ 24), several government ministers publicly condemned the act and three arrests were made. Regarding the death of Gabriel Daniel Dumitrache (§ 53), a police officer was convicted of bodily harm causing death. Regrettably, however, Article 77 (h), was not applied.

57. Despite the legal framework, ECRI is concerned about the proper application of these provisions. It has been often brought to ECRI's attention that hate-motivated violence has not always been classified consistently and the bias motivation is mostly not specified. Besides, racist motivation as an aggravating circumstance, for example in cases of murder or assault, is currently only taken into consideration at the end of a trial when a guilty verdict has been reached and the sentence is to be determined. While ECRI welcomes the ongoing work⁸⁰ concerning the common methodology for investigations into hate crimes, it stresses the pressing need to establish clear standards in the treatment of hate motivated cases and ensure the effective functioning of the justice system against those acts. Reiterating the crucial importance of effective investigation and prosecution as well as deterrent sanctioning of perpetrators, ECRI refers to the case law of the ECtHR which obliges states to take all reasonable steps to establish whether violent incidents were racially motivated.⁸¹
58. ECRI recommends that the authorities adopt the common methodology for investigating hate crimes without any further delay. Furthermore, police and prosecution services should thoroughly investigate all cases of alleged hate crime and ensure that the possible existence of a bias motivation is consistently taken into consideration in police reports and investigations, as well as in any further judicial proceedings.
59. As for the issue of police misconduct (§§ 52-53), the authorities informed ECRI that in October 2015, the General Prosecutor's Office issued a strategy⁸² to enhance the effectiveness of criminal investigations conducted into allegations of ill-treatment by law enforcement officials, which ECRI welcomes.⁸³ Nevertheless, ECRI recalls its recommendation in its fourth report (§189) and invites the authorities to take further measures⁸⁴ in light of its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which calls, among others, for racial profiling to be defined and prohibited by law and for an independent body to be set up to investigate alleged cases of racial discrimination by the police and to ensure that perpetrators face justice.
60. ECRI reiterates its recommendation that the authorities define and prohibit racial profiling by law and provide for a body which is independent of the police and prosecution authorities entrusted with the investigation of alleged cases of racial discrimination and misconduct by the police.
61. ECRI was informed that since 2014, the National Institute for the Magistracy, the body responsible for initial and in-service training of judges and prosecutors, has provided training on non-discrimination and equality, in cooperation with the EU and the CoE, among others. Seminars for police have also been delivered on a wide range of topics, including training on preventing and combating hate crimes

⁸⁰ In collaboration with the General Prosecutor's Office, the General Inspectorate of the Police, the Ministry of Interior, the Ministry of Justice, the NCCD as well as the NGO ACCEPT. See CoE, Committee of Ministers (2018).

⁸¹ ECtHR (2015) *Natchova and others v. Bulgaria* [GC] (nos. 43577/98, 43579/98), §§ 160-168; *Cobzaru v. Romania* (2007) (no.48254/99): §§ 96-101.

⁸² The Strategy for increasing the effectiveness of investigations conducted in cases of ill-treatment by state agents (police officers, penitentiary staff, gendarmes) in connection with their professional duties.

⁸³ See also CoE, Committee of Ministers, CM/ResDH (2016)150.

⁸⁴ See also European Roma Rights Center et al (2016).

organised by the OSCE-ODIHR.⁸⁵ ECRI is particularly pleased to note the involvement of prosecutors in the activities organised during Romania's presidency of the International Holocaust Remembrance Alliance from March 2016 to March 2017. While these activities have helped enhance the capacity of law enforcement bodies, it has frequently been stressed that the police, state prosecution and judiciary continue to experience problems in identifying hate crime and applying the legislation and that both the initial and in-service training to remedy this situation is insufficient. ECRI therefore underlines the importance of the proper qualification of hate crimes and urges the authorities to improve knowledge and expertise among the responsible law enforcement agencies in understanding hate crime dynamics and recognising hate crime.

62. On a related note, ECRI commends the constructive dialogue⁸⁶ recently established between the authorities and the LGBT community and welcomes, in particular, the training provided to the police on issues related to LGBT hate crimes, in cooperation with the NGO Accept. ECRI welcomes these initiatives as very positive steps in tackling the problem of under-reporting caused by insufficient trust in law enforcement bodies and encourages the authorities to institutionalise such cooperation within the police.

63. ECRI recommends that the authorities provide further training for police, prosecutors and judges on how to deal with racist and homo-/transphobic acts of violence. This should include improved procedures for recognising bias-motivations. Furthermore, it also recommends that, in order to address the problem of underreporting, the authorities enhance cooperation between the police and vulnerable groups, in particular the Roma and the LGBT communities.

4. Integration policies

64. Romania recognises twenty national minorities.⁸⁷ In this context, ECRI refers to the work of the Council of Europe's Advisory Committee of the Framework Convention for the Protection of National Minorities⁸⁸ (FCNM) for details on minority rights, in particular with regard to national minorities' expression of a separate identity. In this section, ECRI focuses on two specific groups and their integration into Romanian society: Roma and non-nationals, including refugees and beneficiaries of subsidiary protection.

- Roma

65. Based on the 2011 census, the Roma population amounts to 621 573 people, but the real number is reported to be significantly higher (the Council of Europe estimate is 1 850 000, meaning 8, 6 % of the population).⁸⁹ The discrepancy is often explained by the reluctance among Roma to self-identify for fear of stigmatisation and discrimination.⁹⁰ ECRI regrets that there is still no comprehensive system for the collection of data for the purposes of assessing the scale of discrimination of groups of concern to ECRI, including Roma⁹¹, despite the

⁸⁵ Under the project on Integrated Approach to Preventing Victimization in Roma Communities, funded by the Norwegian Financial Mechanism, during October 2014 - April 2017.

⁸⁶ As part of the working group for the execution of M.C. and A.C. v. Romania judgement of the ECtHR.

⁸⁷ Albanians, Armenians, Bulgarians, Croats, Germans, Greeks, Hungarians, Italians, Jews, Poles, Roma, Russian-Lipovans, Serbs, Slovaks and Czechs, Tatars, Turks, Ukrainians, Macedonians and Ruthenians. ECRI notes that only the minorities that are represented in the Council of National Minorities are regarded as national minority and afforded protection.

⁸⁸ For its last report, please see the Fourth Opinion on Romania (2018) of the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) as well as CoE Advisory Committee on the FCNM (2018b), Comments of the Government of Romania.

⁸⁹ CoE, Estimates on Roma population in European countries, <http://www.coe.int/en/web/portal/roma>

⁹⁰ Carrera et al (2017): 76.

⁹¹ See ECRI GPR No.13 on combating anti-Gypsyism and discrimination against Roma, § 14.

recommendation in its last report (§ 185). The lack of accurate figures on Roma hinders the development of adequate policy responses by the state authorities.⁹²

66. ECRI notes that the negative public perception of Roma is commonplace in Romania. According to an opinion poll conducted by the NCCD in 2015⁹³, the fourth least accepted group by population is Roma (after persons living with HIV, drug addicts and persons with disabilities). Furthermore, most of the authorities with whom ECRI met claimed that socio-economic marginalisation of Roma is a result of poverty, which is a widespread phenomenon in the country affecting all citizens, but not an issue of discrimination. ECRI understands that there are large disparities in income between rural and urban areas and the share of the population at risk of poverty is high in Romania. However, ECRI points out that while 25% of the general population has incomes below the national poverty threshold, this rate stands at 70% for the Roma population.⁹⁴ In ECRI's view, this difference is telling and signifies that Roma are significantly worse off than the rest of the population in many aspects of life. Besides, ECRI believes that overlooking the discrimination dimension of the problems experienced by Roma entails a high risk of denying the real issue and eventually reinforces the deeply rooted anti-Gypsyism at different levels of society.
67. Romania has invested significant efforts into improving the inclusion of Roma through the Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority (hereafter the Strategy) from 2014 to 2020 (last revised in 2015), which is the latest strategic document. ECRI is pleased to note that the Strategy is comprehensive in covering four crucial areas - education, employment, health and housing - as well as other fields such as social services and culture.
68. ECRI was informed that the National Roma Contact Point (NRCP) and National Agency for Roma (NAR) coordinate the process of Roma inclusion at the national and local level and the Inter-Ministerial Committee, which involves all central institutions, ensures implementation by the various relevant ministries and local authorities. While the Inter-Ministerial Committee is in principle expected to meet four times a year, the authorities informed ECRI that these meetings did not always take place. In ECRI's view, this trend indicates a lack of political will to ensure the effective monitoring of the Strategy and assess its impact.
69. On a similar note, the EU Commission and civil society indicate that both horizontal (across sectorial ministries) and vertical (with central and local levels) coordination structures of the Strategy are weak⁹⁵, compromising its proper implementation. Several reports further point out the lack of common understanding between the central and local authorities to integrate sustainable measures and the need to follow up the local action plans with a concrete set of indicators, clear time-bound targets, allocated budgets and appropriate reporting mechanisms.⁹⁶ Hence, more efforts must be made to turn these formal coordination structures into effective cooperation bodies with the full involvement of all stakeholders, including a mechanism that guarantees the accountability of local authorities to the central authorities.⁹⁷ Besides, ECRI notes with concern that the Strategy does not have a

⁹² Similar concerns raised by UN Human Rights Committee (2017): para. 12.

⁹³ http://nediscriminare.ro/uploads_ro/112/106/Sondaj_TNS_CNCD_2015.pdf (2015).

⁹⁴ FRA-EU MIDIS, Roma (2016): 14.

⁹⁵ European Commission (2015):8.

⁹⁶ Carrera et al (2017): 48; European Commission (2016): 77. In this connection, ECRI welcomes the project ran by the Romanian Institute for Research on National Minorities on mapping of Roma Communities for community-level monitoring during 2014-2016. Based on the data collected, a set of indicators for monitoring progress of Roma inclusion at the local level was developed. See European Commission (2015): 13.

⁹⁷ See ECRI (2017).

clear budget, other than external, almost exclusively EU funds.⁹⁸ Moreover, ministries do not have earmarked funds, which makes it hard to calculate the financing available for Roma integration measures and to ensure their long-term sustainability.

70. ECRI recommends that the authorities ensure that the Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority from 2014 to 2020 is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive and gender disaggregated equality data. The strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with local authorities and members of the Roma community, and adequate funding should be allocated for the strategy to be effective. An institutionalised approach to accountability between central and local authorities should also be ensured.
71. As regards education, while general rural-urban disparities, Roma exclusion and inequality in education often overlap⁹⁹, ECRI takes positive note of the progress made in the educational inclusion of Roma children through different measures in recent years. These include providing scholarships for pupils in secondary and professional schools; free transportation by school buses for pupils living in remote areas, and free school supplies as well as good practices such as “Second Chance” and “School after School” programmes. However, in spite of these efforts, a FRA-EU MIDIS survey shows that the share of Roma children of compulsory school age who attend school remains at 77 %.¹⁰⁰ While the same data set shows that the rate of Roma children enrolling in primary school (85%) is almost as high as in the general population (89%), ECRI regrets to note that the enrolment rate drops significantly at secondary school level and is only 34% (compared to 87% in the general population).¹⁰¹ On the other hand, ECRI is pleased to note progress in the fight against early school leaving¹⁰², owing to the National Strategy for the reduction of early school leaving (2015-2020) and encourages the authorities to continue their dedicated efforts for responding to the problem of early school leaving of Roma children, in particular at secondary school level, more effectively.

⁹⁸ For 2014-2020 period, Romania will be allocated €22.9 billion in EU funds, out of which €15.95 billion will come from the European Social Fund (ESF) and the European Regional Development Fund (ERDF).

⁹⁹ EU underlines that access to quality and inclusive education is faced with continuous challenges. Over the last years, the Romanian authorities have taken some measures to address poor education outcomes and skill shortages by adopting relevant strategies. See European Commission (2018): 11.

¹⁰⁰ FRA-EU MIDIS, Roma (2016): 24.

¹⁰¹ *ibid*: 25. In Romania, primary school is between 7-14 years, whereas secondary school is 15-18 years.

¹⁰² European Commission (2017): 8. FRA-EU MIDIS survey in 2016 suggests that 77 % of Roma aged 18-24 are early school leavers.

72. In ECRI's view, early childhood education is an important determinant of future life opportunities. Providing Roma children with an equal start in life with their non-Roma peers is essential to break the cycle of intergenerational transmission of poverty.¹⁰³ Increasing Roma attendance at pre-school facilities and enabling them to learn the Romanian language before entering primary school is instrumental to counter segregation and to ensure the inclusion of Roma pupils in mainstream schools. On that basis, ECRI welcomes the special support ensuring bilingual teaching (in Romani to Romanian) in 22 kindergartens. Nonetheless, ECRI is concerned about the low rate of pre-schooling for Roma which is only 38%, especially considering that this figure was 46% in 2011.¹⁰⁴ This is partly explained by the insufficient number of kindergartens, largely due to the financial decentralisation of these facilities to local authorities.¹⁰⁵ As a consequence, the inadequate access to pre-school by Roma children and the absence of uniform quality of these programmes remain as an issue of concern.
73. ECRI recommends that the authorities evaluate the inclusion of Roma children in the existing pre-school programmes with a view to increasing their participation. They should also evaluate whether these programmes provide equal access to education and quality teaching.
74. Another area of concern is the segregation of Roma pupils, which still persists. According to FRA-EU data¹⁰⁶, 29% of Roma children in Romania attend schools in which all or most of their schoolmates are Roma. As indicated in ECRI's last report, the authorities previously developed measures to end school segregation, mainly through the Ministerial Order no.1540/2007 on the prohibition of school segregation of Roma children. However, Roma NGOs informed ECRI that this Order largely remained on paper due to the failure by authorities, primarily school inspectorates, to meet their reporting obligations and lack of sanctions¹⁰⁷ for not reporting. This resulted in having no official data on its implementation ever being made public by the Ministry of Education.¹⁰⁸ Against this background, ECRI notes the adoption of the new Ministerial Order no. 6134/2016 on the prohibition of school segregation in pre-university schools¹⁰⁹, which expands the scope to all pupils and shifts the focus more towards equal access to quality education rather than solely monitoring segregation in schools. ECRI considers that pursuing active desegregation measures to provide good quality education to Roma children in a mainstream setting should be a priority, a practice it was pleased to observe in its visit to three schools in the Giulești-Sârbi neighbourhood in Bucharest.
75. ECRI recommends that the authorities ensure the effective implementation of Ministerial Order no. 6134/2016 on the prohibition of school segregation in pre-university schools with a view to achieving inclusive education. This should include the setting up of a robust monitoring procedure.
76. ECRI notes that the housing situation¹¹⁰ of Roma remains a matter of concern. Research demonstrates that as of 2016, a disturbingly high share of the Roma

¹⁰³ World Bank (2012).

¹⁰⁴ FRA-EU (2018): 25.

¹⁰⁵ UN Special Rapporteur (2016): para. 34. In this respect, ECRI takes positive note of the fact that the Ministry of National Education has finalised, through a project financed by the Government of Romania and the Council of Europe Development Bank, 185 new kindergartens, while 37 are under construction.

¹⁰⁶ FRA-EU MIDIS, Roma (2016): 28.

¹⁰⁷ ECRI notes that cases of alleged school segregation can be brought before the equality body, the NCCD. In several cases, the NCCD found discrimination and sanctioned school units and inspectorates.

¹⁰⁸ See similar European Roma Rights Center (2016): 4-5.

¹⁰⁹ Order no. 6158/2016 on the approval of Action Plan for school desegregation and educational quality increase in pre-university schools in Romania complemented this order. Pre-university education covers primary and secondary education.

¹¹⁰ ECRI notes that housing deprivation affects large part of the population (19.8% versus 4.9% in the EU).

population were living without tap water (68 %) and without a bathroom or toilet inside their dwellings (79%).¹¹¹ The ECRI delegation was also able to witness *in situ* the very poor housing conditions of Roma communities in Luica village, close to Soldanu, with limited access to sanitation and a regular power supply. Moreover, several human rights bodies noted that Roma, who mostly live in irregular settlements, have no security of formal tenure and thus live at risk of forced evictions by local authorities, often to isolated areas.¹¹² For instance, in 2015, the Sibiu City Council suggested relocating the Roma community to the country side, despite the request of the Prefect Office¹¹³ as well as the community to improve their living conditions, particularly by providing access to safe water. Taking action *ex officio* on the matter, the NCCD found this suggestion discriminatory and imposed sanctions.¹¹⁴ ECRI therefore urges the authorities to issue guidelines for prefect offices to review the legality and proportionately of local authorities' eviction orders more thoroughly. In addition, ECRI also invites them to give clear instructions to local authorities to prioritise the regularisation of informal settlements over eviction.¹¹⁵

77. Furthermore, ECRI notes with concern that there is still no legal remedy in place with automatic suspensive effect in case of potential eviction, nor are there any provisions for sufficient notice to and consultation with the affected communities.¹¹⁶ Judicial eviction procedures¹¹⁷ do not provide for any proportionality analysis of the effects of the eviction. More worryingly, demolitions of informal settlements are not treated as evictions under the legislation, thus precluding prior judicial review and denying the legal safeguards applicable to other evictions.¹¹⁸ Reportedly, in case of an eviction, the provision of adequate alternative housing is also not always ensured.
78. ECRI recommends that the authorities step up their efforts to regularise irregular settlements, ensuring that any initiatives taken in this direction include the Roma. It also recommends that the authorities ensure that all Roma, who may be evicted from their homes enjoy all the guarantees that international standards provide for in this connection; they should be notified of the planned eviction well in advance and benefit from appropriate legal protection; and they should not be evicted without the possibility of being rehoused in decent accommodation.
79. Moreover, one of the most fundamental housing policy problems is the shortage of social housing. ECRI notes that the Strategy does not address this issue adequately and available units of social housing have not met demand.¹¹⁹ It was brought to ECRI's attention that the Law on Housing¹²⁰ mandates local authorities to establish the criteria -based on a points system- for allocating social housing, which results in an uneven practice that often seems to have a disproportionately negative effect on Roma.¹²¹ For example, the Cluj-Napoca City Council awards 45 points for PhD holders, whereas it designates 5 points for persons with primary

¹¹¹ FRA-EU (2018): 43, 45.

¹¹² UN Special Rapporteur (2016): para. 19, 22; UN Human Rights Council (2018).

¹¹³ The prefect represents the Government at the local level and is hierarchically subordinated to the Ministry of Internal Affairs.

¹¹⁴ NCCD, Decision no. 419/2016. This decision was upheld by the Alba Iulia Court of Appeal in 2017. ;

¹¹⁵ See similar UN Special Rapporteur (2016): para. 60.

¹¹⁶ European Roma Rights Center (2016): 6.

¹¹⁷ Under articles 1033-1048 of the Civil Procedure Code.

¹¹⁸ European Roma Rights Center (2016): 6. ECRI notes that there is a pending case on this matter before the ECtHR. See *Fetme Memet and others v. Romania* (no. 16401/16, communicated on 8 March 2017).

¹¹⁹ Romani CRISS (2015): 11; Vincze, E (2016): 4.

¹²⁰ Law no.114/1996, Article 43.

¹²¹ See also EELN (2017b): 22; ACTEDO (2018): 5. ECRI also notes that Roma are not explicitly listed in the Law on Housing as one of the categories of beneficiaries.

education and similarly, only two points for each dependent child.¹²² While social housing is predominantly financed from the national budget, there is no oversight mechanism to ensure that housing allocation is transparent and non-discriminatory. In this connection, ECRI notes with satisfaction the decision of the NCCD, which found that the criteria defined by Reghin municipality on the basis of education level¹²³ was discriminatory. This decision was later upheld by the Târgu Mureş Court of Appeal.¹²⁴

80. ECRI recommends that the authorities amend the Law on Housing to establish clear and uniform criteria for allocating social housing which prioritise vulnerable groups, including Roma people as well as ensure that housing allocation is transparent and non-discriminatory.

81. Another negative factor for Roma integration is limited and unequal access to employment. Available data indicate that only 33% of the employable Roma population (between 20-64 years) are in paid work (compared to 66% of the general population) while worryingly 64% of young persons (16-24 years old) are neither in employment nor in education (compared to 17% of the general population).¹²⁵ ECRI regrets to note that there is a strong employment gap between Roma women and men, which is not sufficiently addressed in the Strategy. Therefore, ECRI strongly urges the authorities to amend the Strategy with a view to define more effective measures to tackle the problem of high unemployment among the Roma community, as well as the employment gap between Roma women and men. On a positive note, ECRI welcomes the job fairs organised by the National Agency for Employment (NAE) through the implementation of "Program 145", designed for 145 localities where a large number of Roma live. This programme contains tailored measures, especially as regards career counselling and vocational training, assisting Roma to be recruited.¹²⁶ Nevertheless, ECRI considers that the authorities should take a more targeted approach to break the vicious circles of unemployment of Roma. In this regard, endorsing more innovative measures, particularly in reaching out to private employers through subsidies and/or incentives, for example in the field of taxation, would help to increase the economic empowerment of the Roma.

- **Non-nationals**

82. Although Romania is a country significantly affected by outward migration¹²⁷, it also continues to be a country of transit and destination for migrants and persons in need of international protection. According to UNHCR data, between 2008 and March 2018, a total of 18 434 persons applied for asylum in Romania. Between 2012 and 2018, 4 773 persons were granted international protection (refugee status and subsidiary protection).

83. Persons who have been granted refugee or subsidiary protection status have the right to work, as well as access to health care¹²⁸, education and social housing, on an equal footing with Romanian citizens. This is commendable. Furthermore, the Government Ordinance (GO) no. 44/2004 on the integration of aliens offers an

¹²² <https://storage.primariaclujnapoca.ro/userfiles/files/150.PDF>

¹²³ Such as granting 1 point for primary school graduates but 5 points to those with higher education.

¹²⁴ NCCD, Decision no. 511/2016; Târgu Mureş Court of Appeal Decision no. 30/2017.

¹²⁵ FRA-EU MIDIS, Roma (2016): 28.

¹²⁶ In 2016, the number of localities was increased to 150 and the programme became "Programme 150". During the period 2014-2016, 10 984 Roma persons were employed and 2 346 Roma attended vocational training courses. In 2017, 28,078 Roma benefited from active measures for employment, out of which 4,196 took-up employment.

¹²⁷ According to a recent World Bank report, Romania has experienced the biggest increase in emigration among EU members since 1990. Between 3 million and 5 million Romanians - from a country with 19.6 million citizens - now live and work abroad. See World Bank (2018): 4.

¹²⁸ This implies payment of a contribution to health insurance, which is also valid for Romanian citizens.

integration programme for persons granted international protection, which is up to one year (initially six months) and includes Romanian language and culture courses and assistance with obtaining non-reimbursable financial support amounting to 540 lei (115 euros) per month. This support however depends on participation in the integration programme. There is also the possibility for those persons to stay in reception centers during the integration programme.

84. ECRI notes that since 2015, the impact of the GO no. 44/2004 seems to have increased and the General Inspectorate for Immigration has become more responsive in addressing matters related to integration. Notwithstanding this improvement, regrettably, there is still no specific system of integration indicators in place. ECRI considers that this absence makes it difficult to assess the situation of refugees and persons under subsidiary protection and to monitor the results of integration programme, as recommended in ECRI's last report (§ 175).
85. Access to the labour market - a crucial factor in promoting integration – remains problematic. The main obstacle to finding employment is poor command of Romanian. As noted earlier, the children of refugees and of beneficiaries of subsidiary protection can access primary and secondary schooling free of charge along the same lines as Romanian children. They are also entitled to Romanian language courses. Adults are equally eligible for Romanian language courses. The authorities informed ECRI that during 2014 and 2015, 741 persons under international protection participated in Romanian language courses. In spite of this available framework, various interlocutors insisted that access to Romanian language classes is a major problem and their current provision is gravely insufficient. Considering that this situation also curtails the gainful employment and self-sufficiency of these people, ECRI urges the authorities to take immediate measures to this end. In this connection, ECRI positively notes the pending amendments to the GO no. 44/2004 introducing intensive Romanian language courses for persons who are entitled to benefit from the integration programme and encourages the authorities to adopt these amendments as soon as possible.
86. ECRI recommends that the authorities carry out a comprehensive evaluation of the integration programme for beneficiaries of international protection, with a particular focus on investing appropriate funding in providing sufficient Romanian language courses.

II. Topics specific to Romania

1. Interim follow-up recommendations of the fourth cycle

87. The three interim follow-up recommendations from ECRI's fourth round report are discussed in the relevant thematic sections above (§§ 38, 39, 48, 49, 68 and 69).

2. Policies to combat discrimination and intolerance vis-à-vis LGBT persons¹²⁹

- Data

88. There is no official data on the size of the LGBT population in Romania. Article 7(1) of the Law on the Protection of Individuals with regard to the Processing of Personal Data prohibits the processing of data concerning health or sex life without the person's consent. However, Recommendation CM/Rec (2010) 5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. In ECRI's view, data collection on LGBT persons, on a voluntary basis¹³⁰ and in line with this Recommendation can serve as a useful starting point for addressing discrimination and intolerance against this group.

¹²⁹ For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

¹³⁰ See paragraph 24 and footnote 15.

89. On the Rainbow Europe Map 2017 reflecting the European countries' legislation and policies guaranteeing LGBT human rights, Romania ranks 35th out of 49 countries scored, with an overall score of 21%.¹³¹ Reports indicate that social acceptance of LGBT people in Romania is still low. 64% of the respondents to the 2013 European Union LGBT Survey said that discrimination on grounds of sexual orientation is "very widespread" in their country, while the EU average is 31%.¹³² Moreover, 54% of the LGBT respondents stated that they had been personally discriminated against or harassed on grounds of their sexual orientation, the EU average being 47%. As a result, a great majority of LGBT persons in Romania do not disclose their sexual orientation or gender identity, as confirmed by the same survey suggesting that 72% of the participants are never open about their LGBT background.¹³³ According to the Eurobarometer 2015, 36% of the people surveyed in the country agreed with the statement that homosexual persons should have the same rights as heterosexual people (the EU average was 71%).¹³⁴

- **Legislative issues**

90. Where criminal law is concerned, ECRI refers to the analysis and recommendations contained in §§ 2 and 4 of this report. As regards civil and administrative law, ECRI notes that the Anti-discrimination Law mentions sexual orientation among the grounds of discrimination, but makes no mention of gender identity (see § 6 and the recommendation in § 16).
91. Concerning family matters, the Civil Code contains a prohibition of same-sex marriage.¹³⁵ Furthermore, the Romanian law does not recognise same-sex marriages conducted abroad, either by Romanian or by foreign citizens. However, this provision was referred by the Romanian Constitutional Court to the Court of Justice of the European Union (CJEU), seeking clarification on the meaning of the term "spouses" in the European Union (EU) rules¹³⁶ on freedom of movement, following the Romanian authorities' refusal to grant the same-sex spouse of a Romanian national the right to reside in Romania. On 5 June 2018, the CJEU ruled that the term "spouse", for the purpose of granting a right of residence to non-EU citizens, includes same-sex spouses, regardless of whether the EU country recognises same-sex marriages or not.¹³⁷ Subsequently, on 18 July 2018, the Romanian Constitutional Court held that same-sex married couples have the right to reside in the country if one of the spouses is a Romanian citizen. In this connection, ECRI takes positive note of the three draft bills pending before the Romanian Parliament regarding civil partnerships that provide for the legal recognition of same-sex couples and underlines that the absence of such recognition leads to various instances of discrimination in the field of social rights. It therefore draws the authorities attention to the above mentioned Recommendation CM/Rec(2010)5.¹³⁸ ECRI would also like to draw the Romanian

¹³¹ <https://rainbow-europe.org/country-ranking>

¹³² The EU LGBT Survey released by the European Union Agency for Fundamental Rights (FRA) on 17 May 2013, reported 1260 respondents from Romania, of whom 55% were gay men, 11% lesbian women, 6% bisexual women, 17% bisexual men and 12% transgender persons.

¹³³ *ibid.*

¹³⁴ ILGA-Europe Annual Review (2016): 137.

¹³⁵ Article 277 (1) of the Civil Code. A group called 'Coalition for the Family' (Coaliția pentru Familie), initiated a referendum for a constitutional amendment regarding Article 48 (1), which defines family as a freely consented marriage of the spouses and sought to describe marriage as a union between a man and a woman. The referendum was held in 6-7 October 2018 but it failed as the turnout fell below 30% needed to validate it. Balkan Insight (2018); BBC News (2018).

¹³⁶ Under Article 2(2)(a) of the EU Directive 2004/38/EC.

¹³⁷ Judgment in Case C-673/16, *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others*, 5.6.2018, Court of Justice of the European Union (CJEU).

¹³⁸ Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)5, 31.3.2010: §§ 24, 25.

authorities' attention to the judgment of the European Court of Human Rights in the case of *Oliari and Others v. Italy*, in which the Court found that although Article 12 of the European Convention on Human Rights did not impose an obligation on governments to grant a same-sex couple access to marriage, the absence of a legal framework allowing for recognition and protection of their relationship violated, in the case of the Italian legal order, their rights under Article 8 of the Convention.¹³⁹

92. ECRI recommends that the authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected.

93. ECRI notes that there is no specific legislation regulating gender reassignment. The Romanian Civil Code and Civil Status Act provide for the possibility for transgender persons to change their gender on identity documents, only upon obtaining a final and irrevocable court decision confirming their sex change. However, there is a legal vacuum on this issue, as neither the related procedures nor the responsible bodies are clearly defined. Reports also indicate that, in the absence of clear laws or guidance, the courts issue contradictory interpretations on the application of the available legal gender recognition procedures.¹⁴⁰ For instance, some courts held that such recognition was contingent on gender reassignment surgery or sterilisation while others did not.¹⁴¹ ECRI considers, therefore, that the legislation needs to be further developed to include the essential information and necessary steps concerning both gender recognition and gender reassignment. For example, gender reassignment surgery should not be a prerequisite for gender changes in personal documents.¹⁴² In this respect, ECRI would like to draw the authorities' attention to Resolution 2048 (2015) of the Council of Europe's Parliamentary Assembly¹⁴³ and encourages the authorities to ensure the legal recognition of a person's gender reassignment in a quick, transparent and accessible way.

94. ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment in line with the Council of Europe guidelines.

- **Promoting tolerance and combating discrimination**

95. There are several studies showing that intolerance and discrimination towards LGBT persons are widespread in Romanian society. The opinion poll conducted by the NCCD¹⁴⁴ revealed that LGBT persons are the fifth most unwanted group after persons living with HIV, drug addicts, persons with disabilities and Roma. Only 7% of respondents said that they would accept a homosexual as their relative, while 12% of them would want an LGBT person to be their colleague. These extremely low levels of societal acceptance contribute to significant discrimination and stigmatisation against LGBT persons in key areas of life.¹⁴⁵ Between 2013 and 2016, the National Council for Combating Discrimination (NCCD), which deals with discrimination complaints based on sexual orientation, received a total of 33

¹³⁹ ECtHR (2015), *Oliari and Others v. Italy* (Applications nos. 18766/11 and 36030/11) Judgment.

¹⁴⁰ ILGA (2016): 41.

¹⁴¹ EU Agency for Fundamental Rights (FRA) (2014): 43.

¹⁴² ECRI notes that ECtHR ruled that requiring sterilisation for legal gender recognition violates human rights: *A.P., Garçon and Nicot v. France* (2017) (nos. 79885/12, 52471/13 and 52596/13). In this context, there is a pending case before the ECtHR regarding the alleged lack of clear legislative regulation of gender reassignment in Romania and the refusal of the authorities to change personal identity documents. See *X. v. Romania, Y. v. Romania* (nos. 2145/16 and 20607/16, communicated on 14 January 2018).

¹⁴³ Parliamentary Assembly of the CoE, Resolution 2048(2015): in particular §§ 6.2.1 and 6.3.1.

¹⁴⁴ http://nediscriminare.ro/uploads_ro/112/106/Sondaj_TNS_CNCD_2015.pdf (2015).

¹⁴⁵ UN Human Rights Committee (2017): 15-16.

complaints on this ground.¹⁴⁶ In 2017, 17 out of the 682 petitions lodged before the NCCD were related to sexual orientation. The NCCD imposed a warning and a fine in two cases and issued a recommendation in another two.¹⁴⁷ ECRI considers that these low numbers of cases before the NCCD may signify a problem of underreporting of discrimination among the LGBT community.

96. In the field of employment, a study showed that 64% of the LGBT persons surveyed have been generally 'closeted' at work and 44% of them have reported an absence of internal policies to protect them from abuse, stating that they were worried about their personal safety.¹⁴⁸ As regards health, transgender persons have the same access to general health care services as all other individuals. However, medical treatment related to gender reassignment, both surgery and hormone therapy, is not covered by the national health insurance system.¹⁴⁹
97. As for education, ECRI notes that while the national curriculum does not have a compulsory health education module, there is an optional course, namely *Education for health*, covering topics including sexual education. However, concerns have been expressed about the high level of bullying and harassment against LGBT persons in school environments. For example, a recent report¹⁵⁰ suggests that six out of ten students were witnesses to or victims of bullying or harassment, while seven out of ten LGBT high school students think that they are not safe at school.¹⁵¹ In this connection, ECRI was concerned about the draft law which provided for the prohibition of sexual education in pre-school, primary and secondary education without the written consent of parents or guardians, foreseeing a fine or imprisonment in cases of violation. Although this draft law was eventually rejected by the Romanian Parliament¹⁵², ECRI nevertheless recalls that such legislation would not only endanger the conduct of available classes but also risk exposing young people to more prejudice which could potentially perpetuate homophobia. As a counter example, ECRI is pleased to note the launching of the first ever educational online platform regarding discrimination based on sexual orientation and gender identity in 2016 by the NGO ACCEPT, namely the LGBT Learning Platform,¹⁵³ whose target groups are students and teachers. In the light of these developments, ECRI encourages the authorities to take appropriate measures to create a safe environment in schools for LGBT pupils; to expand the training of teachers on non-discrimination of LGBT persons and to introduce prevention of discrimination of LGBT persons into mandatory school programmes.¹⁵⁴
98. While ECRI is not aware of any awareness-raising activities on LGBT issues organised by the authorities that target the general public, it welcomes the project called 'Equality of LGBT persons' which is being developed by the NCCD with a view to improving the capacity of Romanian authorities to prevent and combat discrimination based on sexual orientation and gender identity. ECRI is of the

¹⁴⁶ NCCD (2017), Activity Report 2016: 11.

¹⁴⁷ NCCD (2018), Activity Report 2017: 13, 18.

¹⁴⁸ ILGA-Europe Annual Review (2017): 192.

¹⁴⁹ Transgender Europe- TGEU (2017).

¹⁵⁰ Report on 'A safe high school for all: perception and attitudes regarding LGBT individuals in education' was published in February 2016 on the basis of forms collected from 10 high schools, surveys with teachers and youth workers and responses from 158 self-identifying LGBT students.

¹⁵¹ ILGA-Europe (2017), op.cit.: 192.

¹⁵² The draft law on "innocence of childhood" was adopted by the Senate of the Romanian Parliament in December 2016 and rejected by the Chamber of Deputies on 30 May 2018. http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=15735

¹⁵³ <http://www.lgbtlearning.ro/>

¹⁵⁴ See similar ACTEDO (2018): 4 and UN Human Rights Council (2017a): para. 35.

opinion that such initiatives would be instrumental to fight the deeply-rooted stigma and bias against LGBT persons and to increase their social acceptance.

99. Although the problem of intolerance vis-à-vis LGBT persons is evident, there is no policy to combat this phenomenon in Romania. The draft National Strategy 'Equality, Inclusion, Diversity' (2018-2022) contains some measures -albeit not specifically targeted- to promote the non-discrimination of LGBT people. In view of the above-mentioned lack of information about LGBT people and the significant discrimination which they experience, ECRI considers that the authorities should take urgent measures to promote tolerance towards LGBT persons in all areas of everyday life, as well as to combat homophobia and transphobia.
100. ECRI recommends that the authorities draw up and adopt an action plan, either as a separate policy document or as part of national plans currently in the drafting process, which should include the objectives of protecting LGBT persons against hate speech, violence and discrimination, raising awareness about their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality.

INTERIM FOLLOW-UP RECOMMENDATIONS

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

- ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of cases of racist and homo/transphobic hate speech and hate crime brought to the attention of the police and pursued through the courts and that this data is made available to the public.
- ECRI recommends that the authorities provide further training for police, prosecutors and judges on how to deal with racist and homo-/transphobic acts of violence. This should include improved procedures for recognising bias-motivations. Furthermore, it also recommends that in order to address the problem of underreporting, the authorities enhance cooperation between the police and vulnerable groups, in particular the Roma and the LGBT community.

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. (§ 4) ECRI recommends amending the Criminal Code to include the following elements: the offences of incitement to violence and public insults and defamation of a racist nature. The offences of incitement to hatred and discrimination should apply to individuals as well as groups, as recommended in GPR No. 7 § 18 a. The grounds of national origin, colour, citizenship and gender identity should also be included into all the relevant provisions, including as an aggravating circumstance.
2. (§ 16) ECRI recommends that the authorities amend the anti-discrimination legislation to bring it in line with its General Policy Recommendation No. 7. In particular, the legislation should include i) national origin, colour, citizenship and gender identity in the list of prohibited grounds of discrimination; ii) segregation; announced intention to discriminate, inciting and aiding another to discriminate; iii) a legal provision placing public authorities under a duty to promote equality in carrying out their functions; iv) the express duty to ensure that those parties to whom public authorities award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination; and v) the obligation to suppress the public financing of organisations or political parties which promote racism.
3. (§ 21) ECRI recommends that the authorities i) allocate both institutions sufficient financial and human resources, including funding for awareness-raising campaigns regarding non-discrimination and equality, and ii) avoid overlapping jurisdiction and enhance cooperation and coordination between the Ombudsperson and the NCCD in dealing with cases of discrimination.
4. (§ 35) ECRI strongly recommends that the authorities take urgent steps to ensure that anyone who engages in hate speech as covered in Article 369 of the Criminal Code is duly prosecuted and punished.
5. (§ 39) ECRI recommends that the authorities adopt the National Strategy on Equality, Inclusion, Diversity (2018-2022) without any further delay.
6. (§ 43) ECRI recommends that the authorities intensify the work of the cybercrime unit and provide it with appropriate technical and human resources to combat hate speech on the Internet.
7. (§ 45) ECRI recommends that the authorities promote the self-regulation of public and private institutions, including elected bodies and political parties, to combat the use of hate speech. They should also encourage the adoption of appropriate codes of conduct which provide for penalties for breaches of their provisions, as well as the setting up of effective reporting channels. ECRI invites the authorities to draw on the basic principles set out in its General Policy Recommendation No. 15 on combating hate speech when examining these issues.
8. (§ 49) ECRI recommends that the authorities put in place a system to collect data and produce statistics offering an integrated and consistent view of cases of racist and homo/transphobic hate speech and hate crime brought to the attention of the police and pursued through the courts, and that this data is made available to the public.
9. (§ 58) ECRI recommends that the authorities adopt the common methodology for investigating hate crimes without any further delay. Furthermore, police and prosecution services should thoroughly investigate all cases of alleged hate crime and ensure that the possible existence of a bias motivation is consistently taken into consideration in police reports and investigations, as well as in any further judicial proceedings.

10. (§ 60) ECRI reiterates its recommendation that the authorities define and prohibit racial profiling by law and provide for a body which is independent of the police and prosecution authorities entrusted with the investigation of alleged cases of racial discrimination and misconduct by the police.
11. (§ 63) ECRI recommends that the authorities provide further training for police, prosecutors and judges on how to deal with racist and homo-/transphobic acts of violence. This should include improved procedures for recognising bias-motivations. Furthermore, it also recommends that, in order to address the problem of underreporting, the authorities enhance cooperation between the police and vulnerable groups, in particular the Roma and the LGBT communities.
12. (§ 70) ECRI recommends that the authorities ensure that the Strategy for the Inclusion of Romanian Citizens belonging to the Roma Minority from 2014 to 2020 is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive and gender disaggregated equality data. The strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with local authorities and members of the Roma community, and adequate funding should be allocated for the strategy to be effective. An institutionalised approach to accountability between central and local authorities should also be ensured.
13. (§ 73) ECRI recommends that the authorities evaluate the inclusion of Roma children in the existing pre-school programmes with a view to increasing their participation. They should also evaluate whether these programmes provide equal access to education and quality teaching.
14. (§ 75) ECRI recommends that the authorities ensure the effective implementation of Ministerial Order no. 6134/2016 on the prohibition of school segregation in pre-university schools with a view to achieving inclusive education. This should include the setting up of a robust monitoring procedure.
15. (§ 78) ECRI recommends that the authorities step up their efforts to regularise irregular settlements, ensuring that any initiatives taken in this direction include the Roma. It also recommends that the authorities ensure that all Roma, who may be evicted from their homes enjoy all the guarantees that international standards provide for in this connection; they should be notified of the planned eviction well in advance and benefit from appropriate legal protection; and they should not be evicted without the possibility of being rehoused in decent accommodation.
16. (§ 80) ECRI recommends that the authorities amend the Law on Housing to establish clear and uniform criteria for allocating social housing which prioritise vulnerable groups, including Roma people as well as ensure that housing allocation is transparent and non-discriminatory.
17. (§ 86) ECRI recommends that the authorities carry out a comprehensive evaluation of the integration programme for beneficiaries of international protection, with a particular focus on investing appropriate funding in providing sufficient Romanian language courses.
18. (§ 92) ECRI recommends that the authorities provide a legal framework that affords same-sex couples, without discrimination of any kind, the possibility to have their relationship recognised and protected.
19. (§ 94) ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment in line with the Council of Europe guidelines.

20. (§ 100) ECRI recommends that the authorities draw up and adopt an action plan, either as a separate policy document or as part of national plans currently in the drafting process, which should include the objectives of protecting LGBT persons against hate speech, violence and discrimination, raising awareness about their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality.

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